Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

IN RE ELISABETH H.
CATHERINE H.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

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December 15, 1997
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QUESTIONS PRESENTED

1. Whether Section 17a-145-101 (o) of the Regulations of Connecticut State Agencies is violative of the fifth amendment to the United States constitution when applied to deny parents an appeal of a Connecticut Superior Court decision adjudicating their children neglected, uncared for, and abused as defined in Connecticut General Statutes § 46b-120, due to a finding that the appeal was moot because the children had reached the age of majority and the court could grant no practical relief, where there were collateral consequences that negated a finding of "Mootness".

2. Whether Connecticut General Statutes §§ 46b-135 & 46b-136 and Connecticut Practice Book § 1048.1 are violative of the sixth amendment to the United States

constitution when applied to deny parents their right to the effective assistance of counsel in a juvenile proceeding.

3. Whether Connecticut General Statutes § 46b-121 is violative of the first amendment to the United States constitution when applied to deny the petitioners' right to free exercise of religion, specifically to choose the religion in which to raise their children and to raise their children according to the dictates of that religion without governmental interference.

LIST OF PARTIES

Catherine H. & Elisabeth H., through their counsel, Sharon Dornfeld, Esq., 42 Main Street, Danbury, CT 06810.

The State of Connecticut, Department of Children and Families, through its counsel, Assistant Attorney General Patricia E. Naktenis, Mackenzie Hall, 110 Sherman Street, Hartford, CT 06105.

Barbara & Moshe Cohen, through their counsel, Amy Klein, Esq., Federal Road, Danbury, CT 06811.

Rochelle Hutchings and Edward Hutchings, through their counsel, David A. Weinstein, Esq., 280 Main Street, Wethersfield, CT 06109.

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IN RE ELISABETH H.
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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court appears at Appendix A to the petition and is reported at 243 Conn 903, ___ A.2d ___ (1997).

The opinion of the Connecticut Appellate Court appears at Appendix B to the petition and is reported at 45 Conn. App. 508, ___ A.2d ___ (1997).

The opinion of the Connecticut Superior Court appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the Connecticut Supreme Court decided petitioner's case was September 18, 1997. A copy of that decision appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL, STATUTORY & REGULATORY PROVISIONS INVOLVED

United States Constitution, Amendment V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice

put in jeopardy or life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for the public use, without just compensation."

United States Constitution, Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

United States Constitution, Amendment I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Connecticut General Statutes § 46b-120. See Appendix D.

Connecticut General Statutes § 46b-121. See Appendix D.

Connecticut General Statutes § 46b-129. See Appendix D.

Connecticut General Statutes § 46b-135. See Appendix D.

Connecticut General Statutes § 46b-136. See Appendix D.

Regulations of Connecticut State Agencies, § 17a-145-101 (o): "No license shall be granted if, within five years of date of application for license, the provider or anyone regularly residing in the home or any substitute caregiver has had a child removed from his care or custody for reason of child abuse or neglect."

Connecticut Practice Book § 4061. See Appendix D.

Connecticut Practice Book § 1041.1. See Appendix D.

Connecticut Practice Book § 1048.1. See Appendix D.

STATEMENT OF THE CASE

The petitioners' two daughters, Elisabeth H. and Catherine H., were removed from their parents' home on September 8, 1993 by the Danbury Police Department, after it received a phone call from Barbara Cohen of Brookline, Massachusetts. Cohen is the daughter of Rochelle H. from a previous marriage. The children were taken to the Danbury Hospital Crisis Intervention Unit where they were interviewed by a psychiatrist and psychiatric nurse. Although there was no evidence of physical abuse, the children refused to return home. The parents agreed to allow the children to remain out of the home under a voluntary placement. The voluntary placement was subsequently superseded by an Order of temporary Custody issued *ex parte* on October 5, 1993. See Appendix C, p.2.

The Connecticut Department of Children and families ("DCF") filed "neglect", "abuse", and "uncared for" petitions as defined by Connecticut General Statutes § 46b-120. The parents denied the allegations and a trial commenced on December 6, 1993. The trial spanned nearly two years in duration with approximately 30 hearing dates. Nearly forty witnesses testified during the trial.

During the trial, on three separate occasions the respondent-parents' counsel filed motions to withdraw with the trial court, and on all three occasions the trial court denied the motions. The trial court's words and actions indicated a belief that the respondent-parents were incapable of representing themselves and that precautions must be taken to ensure that the parents' rights to effective assistance of counsel were maintained.[1]

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[1] The Court stated, "well, the first rule is not a new one. There was representation before, earlier in the day, that one of the options would be pursued by Mr. And Mrs. Hutchings would be pro se representation. I've taken that into consideration, and I think that falls squarely within the Court's concern that a trial that was conducted as them acting as their own counsel is going to be a much more difficult and

In fact, the record indicated an awareness on the part of the trial court that to grant Attorney Ronan's motion to withdraw may have effective assistance of counsel implications.[2]

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protracted proceeding. I have no doubt that they are aware of the facts in this matter, they are – as well, or if not better that anyone in the room. But, I think this file is a classic example of the legal issues and ramifications as well. Some of which have compelled the Court to re-consider its own actions for legal reasons based upon precedent and interpretation of statute and practice rule.

I don't feel that the Hutchings are competent legally to act as their own legal counsel. Factually, as I said, they've got as good a grip as anyone on the issues that are here in this case. So I've considered their pro se status and feel that, notwithstanding, their offer to do that, I still think that would be a situation in which they would be materially adversely affected by attempting to handle this case without legal counsel. . . . (Emphasis added.) Transcript 12/27/94, p.49.

[2] The court stated, "I want to make sure I understand what I'm trying to find out, Mr. And Mrs. Hutchings. If, for example, Attorney Ronan, as of today, were no longer counsel, and there was a need to either have you proceed pro se, or with an attorney who has never had any involvement to date in the case, is it agreed that they're understood that – Or, do you represent to me, that an appeal, if any, that would be taken would not simply or solely be based upon the fact that your attorney could not provide you with competent representation because he or she came into this case after the case in chief was already presented by the State. They had no oblig – opportunity to cross-examine or enquire witnesses. They are most likely not going to have access to any transcripts or written reports of this case, because that would require an extremely long period of time, so they would,

On September 28, 1995, the court adjudicated the children neglected, uncared for and abused within the meaning of Connecticut General Statutes § 46b-120. On November 7, 1995, the trial court's dispositional order committed Catherine H. and Elisabeth H. to the care and custody of DCF for a period not to exceed twelve months.

On November 16, 1995, the respondents filed an appeal with the Connecticut Appellate Court. On December 1, 995, the petitioner appellee filed a motion to dismiss for lack of subject matter jurisdiction due to mootness. The Connecticut Appellate Court denied that motion to dismiss on January 10, 1996. It was in the brief to the Connecticut Appellate Court that the issue of right to effective assistance of counsel was raised along with argument that the issue was review able under the "Plain Error Doctrine" pursuant to Connecticut Practice Book §4061 (formerly § 4185). Briefs and transcripts were filed and oral argument scheduled for March 17, 1997. By letter dated March 11, 1997, the Connecticut Appellate Court Clerk's Office notified the parties to be prepared to address the additional issue of whether the appeal is moot. During oral argument, the parents argued that the appeal was not moot due to the existence of collateral consequences. This argument was first raised in the parents' opposition to the petitioner-appellee's motion to dismiss.

On June 24, 1997, the Connecticut Appellate Court dismissed the appeal as moot, having found that the older daughter had reached the age of majority at the time of oral argument and that the younger child had reached the age of majority six days after oral argument. The Court concluded that it could grant no practical relief in the case.

The respondent parents timely filed for certification to appeal from the Connecticut Appellate Court decision with the Connecticut Supreme Court on July 7, 1997. The Connecticut Supreme Court denied

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literally, come in here cold and pick up where Attorney Ronan left off, see this case through to completion.

And if that were the scenario, is it your representation that you would not take an appeal based upon the fact that that new lawyer was without all of the experience and familiarity that Attorney Ronan has?" Trans. 12/27/94, p.32.

the petition for certification to appeal on September 18, 1997.

REASONS FOR GRANTING THE PETITION

1. "It is a well-settled rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction." Perry v. Perry, 222 Conn. 799, 803 (1992). This appeal is not moot "because the judgment has potentially prejudicial collateral consequences to the defendant." Housing Authority v. Lamothe, 225 Conn. 757, 765 (1993); see State v. Smith, 207 Conn. 152, 160-61 (1988); Haynes v. Bronson, 13 Conn. App. 708, 710-11(1988). The inability of the respondents to become foster parents is a collateral consequence which defeats mootness.

A collateral consequence of this action is the limitation placed on the respondents to become licensed foster parents. See DCF Regulations § 17a-145-101 (o).[3] The Appellate Court found that there was no foundation in the record to support this argument, citing the fact that there was "no evidence that the respondents had applied to become foster parents and had been rejected nor is there any evidence that they had any intention of applying to become foster parents in the future." This is not a proper application of the collateral consequences doctrine. It does not require the consequence to have occurred or even be imminent, rather all that is required is that "the judgment ha[veJ potentially prejudicial collateral consequences to the defendant." Housing Authority v. Lamothe, 225 Conn. 757, 765 (1993).

According to the Appellate Court, in order to find that the limitations placed on the respondents' ability to become foster parents rises to the level of a collateral consequence, the record must include evidence that the respondents actually applied or intended to apply to become foster parents. Such an onerous burden appears to misconstrue the collateral consequences requirement. The collateral consequence need not actually exist in order to defeat mootness, all that is necessary is that the potential

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[3] DCF Regulations § 17a-145-101 (o) provides in pertinent part: "No license shall be granted if, within five years of date of application for license, the provider . . . has had a child removed from his care or custody for reason of child abuse or neglect." See Appendix D.

for prejudicial impact exists. See Housing Authority v. Lamothe, 225 Conn. 757, 765 (1993); Barlow v. Lopes, 201 Conn. 103 (1986). Here, a plain reading of the regulation demonstrates that such potential prejudicial impact exists.

The Appellate Court concluded that Connecticut State Agencies Regulation § 17a-145-101 (o) stems from the order of temporary custody. The Court, therefore, concluded that a reversal of the trial court judgment would not affect the order of temporary custody and any consequences therefrom. There is a problem with the court's interpretation of the regulation. The regulation is written in terms of having "had a child removed from his care or custody for reason of child abuse or neglect." DCF Regulations § 17a-145-101 (o) (Emphasis added.). An order of temporary custody does not deal with the underlying petition of abuse or neglect, it only deals with the issue of whether the child was in immediate physical danger.[4] Connecticut Practice Book § 1041.1 (1). The reference to "child abuse or neglect" in the regulation therefore, implicates the underlying petition. Although the Appellate Court is correct in its conclusion that a reversal would not affect the order of temporary custody, it would affect the underlying petition under which the regulation limiting foster parenthood appears to apply. A collateral consequence does exist where "actual relief could be granted by way of a reinstatement of the appellant[s'] prior legal status," Phanuef v. Comm'r of Motor Vehicles, 166 Conn. 449, 452-53 (1974); by reversing the trial court and remanding for a new trial at which the respondents may be successful and in turn be permitted to become foster parents under the regulation.

If this Court finds that DCF Regulation § 17a-145-101 (o) does not refer to the underlying petition, then the regulation appears to be unconstitutional as applied by the Appellate Court.[5] Accepting that there

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[4] General Statutes § 46b-129 (b) provides in pertinent part that a court may grant an OTC if "there is reasonable cause to find that the child's . . . condition or the circumstances surrounding his care require that his custody be immediately assumed to safeguard his welfare."

[5] Such an application of the regulation appears to be in violation of the respondents' rights to due process pursuant to

has been a finding in the record that reasonable cause existed for the order of temporary custody. If the respondents were successful at trial in disproving the allegations in the petition, then it stands to reason that the children were not "removed for reason of child abuse or neglect" as provided for in the regulation. The conclusion of the Appellate Court that it could provide no relief by reversing the trial court's decision on the petition is incorrect. If the case were remanded and the respondents were successful at trial in disproving the allegations in the petition, then the children would not have been removed for reason of abuse or neglect, and the respondents would be entitled to become foster parents.

The regulation appears to convey that upon an adjudication that a child was not abused or neglected, the parent would be able to become a licensed foster parent, due to the fact that a child was not "removed from his care or custody for reason of child abuse or neglect." Rather, the child was removed for the reason of an allegation or unproven petition of abuse or neglect, but not "for reason of [actual] child abuse or neglect."

This appears to be a situation "[w]here collateral legal disabilities have arisen, [and] actual relief can be granted by way of a reinstatement of the appellant[s'] prior legal status." Phanuef v.Comm'r of Motor Vehicles, 166 Conn. 449, 452 (1974); see also Sgarellino v. Hightower, 13 Conn. App. 591, 593 (1988).

2. The parents were denied their right to counsel as guaranteed by the sixth amendment to the United States constitution[6] when the trial court allowed them to proceed pro se while their counsel ignored an order requiring him to appear in court and act as co-counsel and advisor to the

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the fifth amendment to the United States constitution and Article First, Section 8 of the Connecticut constitution.

[6] The sixth amendment to the United States constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of counsel for his defence."

parents.[7]

Juvenile cases in which the parents stand accused of abuse, neglect, or uncared for counts in a petition, should be considered "quasi-criminal" in nature and be subject to the protection of right to counsel afforded a defendant in a criminal proceeding.[8] The application of the sixth amendment right to counsel to a civil proceeding is not without precedent. Lavertue v. Niman, 196 Conn. 403 (1985). In Lavertue v. Niman, the Connecticut Supreme Court held that the sixth amendment right to counsel

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[7] As a preliminary matter it must be shown that this issue was reviewable by the Connecticut Appellate Court and Connecticut Supreme Court. Although this issue was not preserved at trial, it is nonetheless reviewable by this Court pursuant to Evans-Golding review; State v. Evans, 165 Conn. 61 (1973), State v.Golding, 213 Conn. 232 (1989).

Under the Evans-Golding doctrine, unpreserved claims prevail when the following four conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claims of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. State v. Golding, supra, 239-40; State v. Laws, 36 Conn. App. 401, 408 (1994).

The parents have satisfied the first three conditions of Evans-Golding entitling them to review, because, (1) the record, consisting of the trial transcript is adequate for review; (2) the right to counsel is a constitutional right; and (3) the transcript clearly shows that the parents were deprived their right to counsel when the court allowed the trial to continue despite the absence of the parents' attorney from the proceedings. The fourth condition, whether the constitutional violation may be deemed harmless error involves a review of the claim itself.

[8] But see, In re Felicia S. and Janelle D., 1993 WL 576430 (Conn.Super.) (court advancing proposition that juvenile cases are not `quasi-criminal").

applies to a defendant in a state supported paternity action. The Court identified paternity actions as quasi-criminal and held it was therefore appropriate to impose the constitutional right to counsel.

The Court's reasoning in extending the right to counsel to indigent defendants in paternity actions was because such actions result in a finding of "guilt" or "innocence" and nonpayment of support orders attendant to a finding of "guilt" may lead to contempt and imprisonment. Id., 407.[9] A juvenile proceeding involving a petition alleging abuse, neglect, or a similar claim is analogous to a paternity action with regard to the rationale behind an extension of a constitutional right to counsel. The juvenile proceeding, like the paternity action, results in the functional equivalent of a finding of "guilt" or "innocence." If the children are adjudicated abused, neglected, or uncared for, the effect is the functional equivalent to a finding of guilt against the parent or guardian. As in the paternity action, in which the nonpayment of support orders may lead to contempt and imprisonment; General Statutes §§ 46b-171, 46b-215, 53-304; in juvenile proceedings, the state may proceed against the parents for reimbursement of money spent on a child while in the custody of the state. See General Statutes §§ 17a-10, 17b-745.[10]

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[9] The court stressed the role the state plays in a paternity action in which the child is a recipient of welfare. Id., 406. The state not only has a monetary interest in a juvenile proceeding where it has expended money during its commitment of the child pursuant to an order of temporary custody, but the actions of the state, through the Department of Children and Family, and the court system which conducts adjudicatory and dispositional proceedings, displays an involvement and interest of a higher order than that of a mere monetary concern. In addition, the state has its role of parens patriae, in which it has the responsibility to protect the welfare of the child.

[10] General Statutes § 17a-10 provides in pertinent part: "The commissioner shall pay for the support and maintenance of any delinquent child who is in residence in any of the department's institutions or facilities or in transit from one institution or facility to another. The commissioner, in his sole discretion, may, if he has sufficient funds, pay for the support and maintenance of any

The right to counsel guaranteed by the sixth amendment to the United States constitution, therefore, should be extended to a parent in a juvenile proceeding, in light of the similarity of interests at stake between a paternity action and a juvenile proceeding.

In the case at hand, this right to counsel was violated when the parents were allowed to proceed with the trial despite the fact that their attorney absented himself from the courtroom during the remainder of the trial.[11] The trial court tried to have it both ways. The court denied Attorney Ronan's motion to withdraw, yet allowed him to absent himself from the courtroom for the remainder of the trial, the majority of which was the presentation of the parents' case. The effect of the actions of the trial court was to give the appearance that the parents' rights were protected by their having counsel to represent them on record, but the reality was that the parents' rights to counsel were infringed due to the absence of their attorney from

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other child or youth who is in his custody. . . ."

[11] The trial court, in its Memorandum of Decision, noted that "[the respondents insisted on their right to proceed pro se, and the court, after canvassing them about the consequences of such an election, granted their request, noting, however, that their pro se appearances would be allowed by the court not in lieu of their attorney's appearance, rather in addition to his appearance." See Appendix C, p.4. It is interesting to review the limited extent of the court's canvass of the parents. It is not the type of canvass normally associated with a waiver of counsel, which is required to be intelligent and voluntary. Faretta v. California, 422 U.S. 806, 835 (1975). Although the trial court did not allow Attorney Ronan to withdraw as counsel, the effect of its canvass was a waiver of counsel by the parents in light of the fact that Attorney Ronan never again entered the courtroom and the parents presented the remainder of their case on their own.

the courtroom and their being forced to represent themselves.

3. Connecticut General Statutes § 46b-121 as applied in this case infringed upon the parents' rights to free exercise of religion as guaranteed by the first amendment to the United States constitution.[12] The religion of the family was one of the factors that led to the children being removed from the parents' home, and eventually to the adjudication and disposition in this case.

A parent's right to free exercise of religion may be restricted only under the most limited of circumstances; in order to prevent harm to the child's mental or physical health. Wisconsin v. Yoder, 406 U.S. 205, 233-34, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972). The most widely accepted view of the harm requirement is that the harm to the child must be substantial and actually occurring or imminent. Child Custody & Visitation, § 10.10[3][c], at 10-187-88 (1991). In the absence of a finding that the parent's religion poses such a threat, it is improper to consider the parent's religious involvement in determining custody. See e.g., Ex Parte Hilley, 405 So.2d 708 (Ala. 1981); Felton v. Felton, 418 N.E.2d 606 (Mass. 1981); Burnham v. Burnham, 304 N.W.2d 58 (1981).

In this case, although there was no evidence that the religious activities of the parents posed any threat of harm to the children, the parents' religion was a topic of concern from the outset of the investigation, throughout the trial, and at the time of adjudication. Questions regarding the religious practices of the parents were first introduced into this case through a report from Christine Lupke, an

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[12] The First Amendment to the United States constitution provides in pertinent part. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The First Amendment is made applicable to the states through the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213 (1940).

intake investigator with DCF. Lupke included language in her affidavit in support of the OTC that the abuse by the parents had "deep religious roots."[13] On cross-examination, Lupke attributed this quote to Elaine Pratt, the psychotherapist who met with the H.'s and the children. It was also revealed in Lupke' s investigation report (Respondent's Exhibit 2, p.3) that she attributed the following comment to Catherine: "According to Cate, her mother wanted her to be pure in her Jewishness." In addition, Elaine Pratt also testified as to the religious aspect of this case.[14] Moreover, Dr. Freedman,

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[13] Lupke made the following statement in response to a question posed by Mr Ronan during cross-examination:

MS. LUPKE. Ms. Pratt had conveyed to me on the telephone after seeing the girls that she felt the situation was very, very serious in the household. She felt that the abuse had deep religious roots. Those were the terms she used, and I took that -- I did not ask her to expand on that, but I took that to mean that there were deep religious convictions that were entwined with the alleged abuse.

[14] The following exchange occurred during the cross-examination of Elaine Pratt:

MR. RONAN: Well, in your report, you -- Your handwritten report, you mentioned on Page 3, that the mother wanted her, wanted her daughter to be -- You reported that Caty said the mother wanted her to be pure in her Jewishness. I'm not -- I don't understand that -- That statement and I'd like to know whether or not you spoke in strong terms to Ms. Lupke about the -- the Jewish faith having something to do with the problem in the house.

MRS. PRA.TT: I don't remember specifically stating it that way or -- or, I mean, I -- I probably did speak to her about that -- About the Jewishness, which came from what

upon whose testimony and report the court heavily relied; Appendix C, p.7, 10); alluded to the impact religion played in the alleged abuse.[15]

In its Memorandum of Decision, the trial court also discussed the issue of the parents' religion in the allegations.[16] The court

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Caty had said about how she thought that -- That she and Lissy were pure in their Jewishness, and that they -- They were -- They were -- Were together very strong -- Have a very strong religious training and education which they appreciated.

[15] Dr. Freedman provided the following during his testimony:

DR. FREEDMAN: Well, I think what the -- what the girls were referring to is that, you know, obviously it's a strongly religious home, but that mother would tend to use the authority of -- of God or -- or religious teachings to suit her own needs so that she might make a -- provide a quote like that thinking she was just trying to instruct the girls. But the girls, again, experienced and said, that mother was always acting as if God was on her side only.

[16] The trial court stated the following: "The respondents offered considerable evidence and testimony to further their argument that most, if not all, of the conduct which they engaged in and the conditions which existed in their home, are sanctioned, if not required, by the tenets of their religion. The prohibition against combining milk and meat and the strict adherence to kosher food requirements were cited as practices which contributed to the schism between parent and child, but which were not negotiable from the parents' religious perspective."

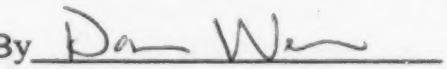
The court appears to imply that the parents should have been more flexible in their religious practices in order to

concluded that "[t]he parents' conduct in the instant case, while ostensibly designed to instill values and "Jewish purity" in their daughters, created a demoralizing, depressing and emotionally deficient climate in the home." (Appendix p.8). Where there was no evidence that the religious practices of the parents in any way posed a threat of harm by questioning the religious practices of the parents, the trial court infringed upon the parents' rights to free exercise of religion in its adjudication and disposition in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By 

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accommodate their children. What the court seems to be overlooking is that the parents are under no such obligation, in fact the parents are constitutionally protected to control their children's religious training free from governmental interference. See, e.g., Cantwell v. Connecticut, 310 U.S 296, 303 n.57, 60 5. Ct. 900, 84 L. Ed. 1213 (1940); see also, Meyer v. State of Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1922); Pierce v. Societv of Sisters, 268 U.S. 510, 45 5. Ct. 571, 69 L. Ed. 1070 (1925). By bringing into question the parents choice not to compromise on issues of religion, the trial court overstepped its authority and violated the parents' rights to free exercise of religion as protected by the first amendment to the United States constitution and Article first, § 3 of the Connecticut constitution.

Cynthia K. Sammarco, in opposition.

Decided September 18, 1997

STATE OF CONNECTICUT *v.* RAYMOND TRAMONT

The defendant's petition for certification for appeal from the Appellate Court, 45 Conn. App. 926 (AC 15319), is denied.

Donald D. Dakers, in support of the petition.

Eileen McCarthy Geel, deputy assistant state's attorney, in opposition.

Decided September 18, 1997

H. CLIFFORD O'SHEA, JR., ET AL. *v.* GERALD F. DEAN ET AL.

The plaintiffs' petition for certification for appeal from the Appellate Court, 45 Conn. App. 911 (AC 15370), is denied.

Thomas F. Brown and *K. Wynne Bohonnon*, in support of the petition.

James C. Riley, in opposition.

Decided September 18, 1997

IN RE ELISABETH H. ET AL.

The respondents' petition for certification for appeal from the Appellate Court, 45 Conn. App. 508 (AC 15417), is denied.

BERDON, J., dissenting, I would grant the respondents' petition for certification to appeal.

William A. Snider, in support of the petition.

Patricia E. Naktenis, assistant attorney general, and *Sharon Wicks Dornfield*, in opposition.

Decided September 18, 1997

STATE OF CONNECTICUT *v.* DUANE FOSTER

The defendant's petition for certification for appeal from the Appellate Court, 45 Conn. App. 369 (AC 15530), is denied.

Pamela S. Nagy, special assistant state's attorney, in support of the petition.

Margaret Gaffney Radionovas, assistant state's attorney, in opposition.

Decided September 18, 1997

STATE OF CONNECTICUT *v.* DAVID JOYCE

The defendant's petition for certification for appeal from the Appellate Court, 45 Conn. App. 390 (AC 15603), is granted, limited to the following issue:

"Did the Appellate Court properly conclude that the trial court's unconstitutional restriction of the defendant's right to present evidence of a state witness' bias against him was harmless beyond a reasonable doubt?"

The Supreme Court docket number is SC 15767.

Kent Drager, senior assistant public defender, in support of the petition.

Frederick W. Fawcett, assistant state's attorney, in opposition.

Decided September 18, 1997

At the request of the court, the parties addressed the question of whether the appeal is moot.

"An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal. When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot." (Internal quotation marks omitted.) *Parrott* v. *Liquor Control Commission*, 44 Conn. App. 745, 746, A.2d (1997).

Notwithstanding that the minors in this case have reached their majority and no order of this court can affect them, the respondents argue that the appeal is not moot because of collateral consequences.

The first claimed collateral consequence is that unless the trial court's judgment is reversed, the respondents will not be eligible to become foster parents for five years. There is no foundation in the record to support this argument. There is no evidence that the respondents had applied to become foster parents and had been rejected nor is there any evidence that they had any intention of applying to become foster parents in the future. Additionally, the bar to foster parenthood arises from the order for temporary custody that had been entered and upheld by the trial court earlier in these proceedings. Regs., Conn. State Agencies § 17a-145-101 (o).[1] Reversal of the trial court judgment sub judice in this appeal would not affect the order of temporary custody or any consequences therefrom.

The second claimed collateral consequence is that reversal would remove the respondents' obligation to

[1] Section 17a-145-101 (o) of the Regulations of Connecticut State Agencies provides in relevant part: "No license [to be a foster parent] shall be granted if, within five years of date of application for license, the provider . . . has had a child removed from his care or custody for reason of child abuse or neglect."

reimburse the state for support of one or both of their children. We do not agree. The respondents are responsible for the support of their children regardless of whether they have been committed to the custody of the department of children and families. General Statutes § 46b-130 provides that "[t]he parents of a minor child for whom care or support of any kind has been provided under the provisions of this chapter, shall be liable to reimburse the state for such care or support . . . ." The commissioner of children and families, pursuant to General Statutes § 17a-90 (b), is authorized to provide "protective services . . . for the care and protection of children other than those committed by the Superior Court whom he finds in need of such care and protection from the state . . . and [to collect] such sums as are determined to be owing and due from the parent of the noncommitted child . . . ." Additionally, the obligation to reimburse the state for support arose from the order of temporary custody, and reversal of the judgment before us on this appeal would not affect that order. Accordingly, reimbursement of support is not a collateral consequence of the trial court's judgment.

Third, the respondents argue that the damage to their reputation resulting from the trial court judgment is sufficient to keep this appeal from becoming moot. They make this claim without reference to any legal authority. Moreover, they fail to understand the nature of the trial court's judgment. It is not directed against them as parents, but rather is a finding that the children are neglected, homeless or abused. Furthermore, all juvenile proceedings are confidential and sealed. General Statutes § 46b-124 (a).

Finally, they argue that the appeal is not moot because the issues are capable of repetition, but may continue to evade review. See *Grace Community Church* v. *Bethel*, 30 Conn. App. 765, 769, 622 A.2d 591,

cert. denied, 226 Conn. 903, 625 A.2d 1375, cert. denied, 510 U.S. 944, 114 S. Ct. 383, 126 L. Ed. 2d 332 (1993).

Although in the present case the minors reached majority before the appeal process was completed, it is unlikely that in every other case in which the same issues arise that the minors will reach majority before the trial court's action can be reviewed. *Loisel* v. *Rowe*, 233 Conn. 370, 384, 660 A.2d 323 (1995). Accordingly, these issues may be reviewed in a future case that presents a proper case or controversy.

The respondents have not persuaded us that this appeal is not moot because of collateral consequences. "Mootness implicates the subject matter jurisdiction of this court. We have consistently held that we do not render advisory opinions. If there is no longer an actual controversy in which we can afford practical relief to the parties, we must dismiss the appeal." *Sadlowski* v. *Manchester*, 206 Conn. 579, 583, 538 A.2d 1052 (1988). This appeal is moot.

The appeal is dismissed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* DONALD WILLIAM MADORE (AC 16335)

Landau, Freedman and Spallone, Js.

Syllabus

Convicted of the crimes of risk of injury to a child and sexual assault in the fourth degree, the defendant appealed to this court. *Held:*

1. The evidence presented was sufficient to support the defendant's conviction of risk of injury to a child.
2. The trial court did not abuse its discretion in denying the defendant's motion in limine and admitting into evidence certain evidence of prior sexual misconduct by the defendant; that evidence was sufficiently recent to have probative value, it was sufficiently similar to the charged offenses so that its probative value outweighed its possible prejudicial

Appendix C-1

IN RE: CATHERINE
AND ELISABETH H.

SUPERIOR COURT FOR
JUVENILE MATTERS
AT TORRINGTON

SEPTEMBER 28, 1995

Memorandum of Decision

This case involves a petition brought by the Department of Children and Families (DCF) which alleges that the minor children Catherine and Elisabeth are neglected, uncared for and (psychologically) abused children. Catherine and Elisabeth are sisters who were 16 and 14, respectively at the time the petition was brought in October, 1993. The respondent parents are Edward and Rochelle H., father and mother.

BACKGROUND

The inception of this litigation occurred on September 8, 1993, when the Danbury Police Department went to the respondent parents' home at at 11:30 p.m., in response to a complaint phoned to Danbury Careline by Barbara Cohen of Brookline, Mass. Cohen is the daughter of the respondent parents. She had been on the telephone with Catherine and during her conversation she became aware of events in the respondents' home which, in Cohen's opinion, warranted police intervention for the protection of Catherine and Elisabeth. The officers subsequently transported the children to Danbury Hospital Crisis Intervention Unit where they were interviewed by a psychiatrist (Dr. Lago) and by a psychiatric nurse (Dolores Ostreicher). The children subsequently requested that they not be required to return to their parents' home. After some negotiation with the parents, it was agreed that the children would remain out of the home under a voluntary placement. The voluntary placement was subsequently superseded by an Order of Temporary Custody (OTC) issued ex parte by this court on October 5, 1993.

By identical petitions dated October 5, 1993, it is alleged that

Catherine and Elisabeth are (1) neglected-in that (they are) being denied proper care and attention physically, educationally, emotionally or morally [are] being permitted to live under conditions, circumstances or associations injurious to [their] well-being; (2) uncared for - in that [they] are homeless; and (3) that according to CGS 17a-101 [they] are abused in that (each) is in a condition which is the result of emotional maltreatment or cruel punishment. The matter was scheduled for further hearings on October 12, 1993

The respondent parents entered denials to the allegations contained in the petitions and the OTC was extended until further order of the court. Trial was assigned for December, 1993.

The respondent parents, through their counsel, subsequently moved this court for a judgment of dismissal of the petition.

The court granted the motion to dismiss the allegations of neglect and abuse, but denied the motion to dismiss the allegation that the children were uncared for (homeless).

In response to a motion by counsel for the children to reconsider that ruling, the court reversed itself and denied the motion to dismiss anyone of the allegations. DCF, through its counsel, then moved the court to amend the petition to add the ground that the children were uncared for " in that their home cannot provide the specialized care which [their] mental or emotional condition requires." The court granted that amendment on September 7, 1994. In the adjudicatory phase the court must decide whether the allegations in the petition have been proven and is limited to events preceding the filing of the petition or the later amendment thereto. Practice Book Sec. 1042.1 (4).

The evidence and testimony commenced an December 6, 1993, with the petitioner having the burden of proving that the children were abused, neglected and uncared for (homeless), an alleged in the

petition; By the amendment permitted on September 7, 1994, the uncared for allegation had been expanded to include the additional ground of "special needs." The trial required approximately 30 hearing dates over a period of approximately 21 months.

The trial was interrupted on numerous occasions to permit the court to hear and decide a plethora of motions ranging from interim foster placement issues to repeated motions by counsel for the respondent parents to withdraw as their attorney.

Notwithstanding the denial of his motion to withdraw on three separate occasions, the respondents' attorney absented himself from the courtroom on March 14, 1995, and filed an appeal of the court's ruling with the Appellate Court. The respondents insisted on their right to proceed pro se, and the court, after canvassing them about the consequence of such an election, granted their request noting however, that their pro se appearances would be allowed by the court not in lieu of their attorney's appearance1 but rather in addition to his appearance. Although the Appellate Court dismissed his appeal, the attorney never resumed an active role as counsel on behalf of the respondents. The respondents acted as their own counsel for the balance of the adjudication trial.

FACTS

From the evidence adduced at trial, including reasonably drawn inferences, the court finds that the following facts were established of the adjudicatory phase of the trial. Catherine and Elisabeth are the teenage daughter of the respondent parents, and lived in their parents' home until the night of September 8, 1993. Also residing in the home at that time were David T., the children' maternal grandfather, and Eddy, Jr., their half-brother. Their half-sister, Karen had a residence in a separate building on the property. The aforementioned Barbra Cohen is another daughter of the respondent parents and older sister of Catherine and Elisabeth. Barbara is married to Moshe Cohen. They live in Brookline, Mass.

The fact that Mrs. Cohen plated a call to the Danbury Careline on the night of September 8, 1993, confirmed in the minds of the respondent parents that Barbra, Moshe, Catherine, and Elisabeth, were involved in an elaborate conspiracy to discredit and embarrass the parents and, at the same time, provide a mechanism for permanently relocating the girls from their parents' home to the Cohen home in Brookline. Subsequent placement of the children at the Cohen home by the Commissioner of DCF pursuant to the OTC reaffirmed the conspiracy theory in the parents' rninds.

Catherine and Elisabeth have not resided in their parents' home since the night of September 8, 1993. They want to the salvation Army shelter in Waterbury for several months and then to foster placement in Bridgeport before being placed in the Cohen home by DCF.

Both children were students at Westchester Hebrew High School and both had attended Ezra Academy in Woodbridge prior to high school and Maimonides Academy in Danbury as grade school. `Their parents made many sacrifices including driving them to and from schools a considerable distance from their home and coordinating rides to and from the train stations when they attended Westchester High. There was little. if any, testimony to the effect that the children were denied necessities such as clothes, books, or the various sundries girls that age need. Food, however, was somewhat wore of a question. Considerable testimony was offered by both sides regarding food and meals in the family home. The better and more credible evidence supports a finding that the girls were left to fend for themselves when it came to what to eat and when to eat it. There were no set meal. during the week with the exception at the Sabbath meal (Shabbat) on Friday evenings and on holidays. while the children were invited and more or less expected to participate in these meals, they often became occasions of contention and dissension sparked by seemingly innocuous factors such as tardiness to the table or the variety of foods - or lack thereof. Those meals and the painful interaction of the family

members which frequently occurred during or after them, serve an & microcosm of the conditions and circumstances which precipitated this trial and which form the basis of the allegations in the petition.

At trial, the petitioner. the Department of children and Families, offered the testimony of several person. including Catherine, Elisabeth, and Moshe Cohen concerning numerous acts by the respondent parents which were described as discipline measures for each of the girls. They included mother's practice of ordering Catherine out of the house ac a result of heated arguments. She would occasionally be locked out of the house and forced to take her meals outside. other measures included requiring the girls to execute written contracts and expectation regarding their personal behavior. The mother also frequently engaged in a behavior pattern described as "The crawl". which involved the withholding by mother of her forgiveness after serious disagreements in a manner calculated to punish one daughter or the other. While these measures at first blush appeared to be innocuous, they were cited by one court appointed evaluator to have had "a highly malignant effect on the girls." (Dr. Bruce Freedman as quoted in State's Ex. E.).

The respondents offered considerable evidence and testimony to further their argument that moat. if not all, of the conduct which they engaged in and the conditions which existed in their home, are sanctioned, if not required. by the tenets of their religion. The prohibition against combining milk and meat and the strict adherence to kosher food requirements were cited as practices which contributed to the schism between parent and child, but which were not negotiable from the parents' religious perspective.

Jewish parenting was constantly alluded to by the parents a. something which dictated their approach to child rearing. They repeatedly expressed dismay over the apparent lack of understanding in that area on the part of anyone who is not Jewish, or Jews who are not as observant in their faith. Testimony offered by the respondents did not scent to corroborate their beliefs. Dr. Norman Linzer, who

testified as a expert on the Jewish family, stated that many of the parenting practices which the court finds were engaged in by the respondent parents. such as expulsion from the home to the outdoors, refusal to speak to or be spoken to, written performance contracts and missions of failure and disobedience, and the withholding of forgiveness tar extended periods of time, are, in fact, not acceptable parenting practices according to Jewish law and scripture Rabbi Linzer went on to note that while it is traditionally abhorrent for a child to criticize or shame his or her parent, the contemporary approach is to recognize that extreme displays of authority are to be avoided as they can create a "chasm" between parent and child be further noted that there is a moral obligation to restore ruptured relationships which occur in Jewish families as in all others. Encouraging children to rail against their parents can be permitted under orthodox law [if) it is designed to promote reunification. (Testimony March 29, 1995)

The parents' conduct in the instant case, while ostensibly designed to instill values and Jewish purity in their daughters, created a demoralizing, depressing and emotionally deficient climate in the home. There was testimony from several ~witnesses including Mr. Cohen that the family re5idence was frequently somewhat lees than clean, perhaps not to a degree that health or safety of the occupants was a factor, but at least to the extent that it evidenced a lack of interest or concern by the parents. Mother testified in an unapologetic tone that she does not clean the house, that she does not do the shopping, and that she does not go to a doctor.

The children testified at great length before the court. Each expressed a love for her mother and father, however each warn unequivocal in her decision that she would not voluntarily return to her parents' home, and, if forced to return, could absent herself from the home at the first opportunity. That testimony was corroborated by DCF social worker Nancy Goldberg in her testimony on December 6, 994; and also by Dr. Bruce Freedman, clinical psychologist, who conducted court ordered evaluaters of

both children and mother and father. He described both children as victims of emotional abuse and psychological warfare. Me attributed that to the situation in the home and to the parenting treatment they had received at home. He concluded that the children were not "typical teens" and that in his opinion the home cannot provide for the psychological needs of the children. The respondent parents offered extensive and varied testimony intended to refute the argument that their daughters were "not typical teens." That testimony included, inter alia, a number of witnesses who have known the children for many years and who have had the opportunity to observe the two girls during periods of interaction with their family (at home, at synagogue, at family events), and also at times when the girls were apart from their family Bat Ezra Academy, at Westchester Hebrew High school, at Camp Rajah, and even on a trip to Israel as recalled in courtroom testimony and through the magic of videotape).

While that testimony is credible and, to a considerable extent unrefuted, it does not preclude the fact that their private moments, when subjected to the negative environment of their home life and the chaotic and depressing circumstances and conditions existent there, their lives were definitely atypical of other children. Years of many serious problems eroded the basic ability cf the parents and the children to express and receive nurturance according to Dr.Freedman. (State's Ex. E, p.2). While not bound to adopt it, the court recognizes and accepts as accurate DCF's operational definition of "neglect" which is "failure, whether intentional or not, of the person responsible for a child's care to provide and maintain adequate food.. supervision and protection... and/or nurturing." The court further recognizes and accepts DCF's definition of "emotional neglect" which is deemed to be manifested (when the person responsible for the child's care is unable to recognize and provide for the child's need for emotional nurturance Whether or not they were cognizant of any state statute or administrative operational definitions, the two children made the determination that they could not continue to live in their parents' home and under their

"dominance". Once they were placed outside the home under a voluntary placement, they consistently reported that they would riot return to that home under any circumstances. (Testimony - Catherine, Feb. 9, 1994 - Elisabeth, March 30, 1994.) Speaking for both, Catherine observed that if they wanted to run away they could have done So, but they wanted to "do it legally."

The evidence and testimony elicited during the trial regarding the girls' steadfast decision. Once out of the home, not to return there, and their assertion that they would run away if returned there, permits the court to find by a fair preponderance of the evidence that an OTC removing them from the home without the consent of the parents was appropriate under Sec. 46b-129(b), C.G.S

CONCLUSION

A determination of whether the facts of this case place Catherine or Elisabeth in a category of a neglected, uncared-for or abused child should be preceded by the statutory definitions of these terms.

A child may be found "neglected when the child has been abandoned or is being denied proper care and attention, physically, educationally, emotionally or morally is being permitted to live under conditions, circumstances or associations injurious to the child's well-being, or has been abused. Sec. 46b-120, C.G.S.

A child may be found "uncared for" who is homeless or whose home cannot provide the specialized care which the child', physical, emotional or mental condition required. Id. A child may be found "abused" in that the child is in a condition which is the result of.. emotional maltreatment or cruel punishment or has been neglected as defined by Sec.46b-120. Sec. 17a-101., C.G.S.

UNCARED FOR -SPECIAL NEEDS/HOMELESS

Apparent from the findings of fact is that neither Catherine nor

Elisabeth were proven to be "uncared for - special needs as there was no showing that either had any need for specialized care.

Equally apparent, however is the fact that due to the circumstances and conditions in the home, neither Catherine nor Elisabeth can return to the home at the present time and then not it can be assured that there has been an amelioration of the depressing and damaging atmosphere which existed on September 5, 1993. The phrase "a house is not a home!" seems appropriate in the instant case. The tact that the respondent parents might be ready and willing to open their front door to these girls and to offer them shelter, does not address the very serious concern that unless the reasons for the children's flight over two years ago are corrected, there is no home for the children to return to.

The court concludes that Catherine and Elizabeth's status as uncared for - homeless children has been established by a fair preponderance of the evidence.

NEGLECTED

A child can be adjudicated to be a "neglected" child by the denial of proper care and/or by being permitted to live in a "deleterious atmosphere.

Based upon the evidence and testimony, the court finds that in the instant case, both criteria have been established by a fair preponderance of the evidence. The court finds that there was emotional maltreatment and cruel punishment existent in he home on September 5, 1992, and for some time prior thereto,

ABUSE AS PER SEC.17a-101

The court's specific finding regarding "emotional abuse' is previously cited in this decision. The failure or the inability of the parents to recognize and to provide for Catherine and Elisabeth's

need for emotional nurturance has been established by a fair preponderance of the evidence. The court further finds that each of these children is in a condition which is the result of emotional maltreatment and cruel punishment. This finding is based, in part, upon the acts attributed to one or both of the parents, but more so upon the conditions as they are found to have existed in the home on September S, 1993, and for sometime prior thereto. while the overall effect of those conditions on the two girls may not have resulted in specialized needs, those conditions do evidence the parents' failure or inability to meet the emotional needs of their two daughters to the degree that the children flea the home and remained out of it in foster care since September 8, 1993 - over two years ago. The court notes that although a goad portion of that time has been in relative placement with their sister and her family, the fact remains that it has been in a residence that is not their family home.

Based upon the foregoing findings and conclusions, the court hereby adjudicates Catherine H. and Elisabeth H. to be uncared for, neglected and abused children, as those terms are defined by statutes.

The matters are to be scheduled for further proceedings regarding the dispositional phase of these petitions.

By the Court,

Joseph W. Doherty
Judge of the Superior Court

Title 46b Sections	Title 17 Sections	Title 51 Sections
46b–139	17–67a	51–320
46b–140	17–68	51–321
46b–141	17–69	51–322
46b–142	17–70	51–323
46b–143	17–80a	51–324
46b–144	17–71	51–325
46b–145	17–72	51–326
46b–146	17–72a	51–327
46b–147	17–73	51–328
46b–148	17–74	51–329

PART I. GENERAL PROVISIONS

§ 46b–120. Definitions

The terms used in this chapter shall, in its interpretation and in the interpretation of other statutes, be defined as follows: (1) "Child" means any person under sixteen years of age; (2) "youth" means any person sixteen to eighteen years of age; (3) "abused" means that a child or youth (A) has had physical injury or injuries inflicted upon him other than by accidental means, or (B) has injuries which are at variance with the history given of them, or (C) is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment; (4) a child may be found "mentally deficient" who, by reason of a deficiency of intelligence, which has existed from birth or from early age, requires, or will require, for his protection or for the protection of others, special care, supervision and control; (5) a child may be found "delinquent" (A) who has violated any federal or state law or municipal or local ordinance, other than an ordinance regulating behavior of a child in a family with service needs as defined in this section or (B) who has violated any order of the superior court; (6) a child or youth may be found "dependent" whose home is a suitable one for him, save for the financial inability of his parents, parent, guardian or other person maintaining such home, to provide the specialized care his condition requires; (7) a "family with service needs" means a family which includes a child who (A) has without just cause run away from his parental home or other properly authorized and lawful place of abode; (B) is beyond the control of his parent, parents, guardian or other custodian; (C) has engaged in indecent or immoral conduct; (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations; or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child; (8) a child or youth may be found "neglected" who (A) has been abandoned or (B) is being denied proper care and attention, physically, educationally, emotionally or morally or (C) is being permitted to live under conditions, circumstances or associations injurious to his well-being, or (D) has been abused; (9) a child or youth may be found "uncared for" who is homeless

or whose home cannot provide the specialized care which his physical, emotional or mental condition requires. For the purposes of this section the treatment of any child by an accredited Christian Science practitioner in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute neglect or maltreatment; (10) "delinquent act" means the violation of any federal or state law or municipal or local ordinance, other than an ordinance regulating the behavior of a child in a family with service needs, or the violation of any order of the superior court; (11) "serious juvenile offense" means (A) the violation by a child, including attempt or conspiracy to violate sections 21a–277, 21a–278, 29–33, 29–34, 29–35, 53–21, 53–80a, 53–202b, 53–202c, 53–390 to 53–392, inclusive, 53a–54a to 53a–57, inclusive, 53a–59 to 53a–60c, inclusive, 53a–70 to 53a–71, inclusive, 53a–72b, 53a–86, 53a–92 to 53a–94a, inclusive, 53a–95, 53a–101, 53a–102a, 53a–103a, 53a–111 to 53a–113, inclusive, subdivision (1) of subsection (a) of section 53a–122, subdivision (3) of subsection (a) of section 53a–123, 53a–134, 53a–135, 53a–166, 53a–167c, subsection (a) of section 53a–174, 53a–196a, 53a–211, 53a–212, 53a–216 or 53a–217b, or (B) running away, without just cause, from any secure placement other than home while referred as a delinquent child to the office of alternative sanctions or committed as a delinquent child to the commissioner of children and families for a serious juvenile offense; (12) "serious juvenile offender" means any child convicted as delinquent for commission of a serious juvenile offense; (13) "serious juvenile repeat offender" means any child charged with the commission of any felony if such child has previously been convicted delinquent at any age for two violations of any provision of title 21a, 29, 53 or 53a which is designated as a felony; (14) "alcohol-dependent child" means any child who has a psychoactive substance dependence on alcohol as that condition is defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders"; (15) "drug-dependent child" means any child who has a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders". No child shall be classified as drug dependent who is dependent (A) upon a morphine-type substance as an incident to current medical treatment of a demonstrable physical disorder other than drug dependence, or (B) upon amphetamine-type, ataractic, barbiturate-type, hallucinogenic or other stimulant and depressant substances as an incident to current medical treatment of a demonstrable physical or psychological disorder, or both, other than drug dependence.

(1949 Rev., § 2802; 1958 Rev., §§ 17–53, 51–301; 1959, P.A. 28, § 52; 1967, P.A. 630, § 1, eff. June 22, 1967; 1969, P.A. 794, § 1; 1971, P.A. 72, § 14; 1975, P.A. 75–602, § 1, eff. Jan. 1, 1976; 1976, P.A. 76–436, § 668, eff. July 1, 1978; 1977, P.A. 77–577, § 4; 1979, P.A. 79–567, § 1; 1979, P.A. 79–581, § 1; 1985, P.A. 85–226, § 1; 1987, P.A. 87–373, § 13; 1990, P.A. 90–161, § 1, eff. July 1, 1990; 1990, P.A. 90–240, § 2; 1990, P.A. 90–325, § 19; 1991, P.A. 91–303, § 11, eff. July 1, 1991; 1992, June Sp.Sess., P.A. 92–1, § 2; 1992, June Sp.Sess., P.A. 92–3; 1993, P.A. 93–91, § 1, eff. July 1, 1993; 1993, P.A. 93–340, § 16, eff. Oct. 1, 1993; 1995, P.A. 95–225, § 9, eff. Oct. 1, 1995.)

. 815t

d within this section. Suprenant v. Commoner of Welfare (1958) 148 A.2d 669, 21 n. Supp. 154.

Christian Science practitioners

he religious exemption provided in this sec- for Christian Science practitioner does not it mandatory reporting and disclosure laws erning child abuse or neglect, nor does it cumscribe the authority of child-protection agencies to investigate and intervene in such cases. Op.Atty.Gen. No. 93–024.

5. Serious juvenile offender

Defendant's being an accessory to robbery in the second degree allowed him to be considered a serious juvenile offender, by having intentionally aided another in the commission of a "serious juvenile offense" as defined by this section. In re Luis R. (1987) 528 A.2d 1146, 204 Conn. 630.

46b–121. "Juvenile matters" defined. Authority of court. Fee

(a) Juvenile matters in the civil session include all proceedings concerning cared-for, neglected or dependent children and youth within this state, mination of parental rights of children committed to a state agency, matters ncerning families with service needs, contested matters involving termination parental rights or removal of guardian transferred from the probate court d the emancipation of minors, but does not include matters of guardianship d adoption or matters affecting property rights of any child or youth over ich the probate court has jurisdiction, provided appeals from probate conming adoption, termination of parental rights and removal of a parent as rdian shall be included. Juvenile matters in the criminal session include all oceedings concerning delinquent children in the state.

(b) In juvenile matters, the superior court shall have authority to make and force such orders directed to parents, including any person who acknowlges before said court paternity of a child born out of wedlock, guardians, todians or other adult persons owing some legal duty to a child or youth rein, as it deems necessary or appropriate to secure the welfare, protection, per care and suitable support of a child or youth subject to its jurisdiction or erwise committed to or in the custody of the commissioner of children and milies. In addition, with respect to proceedings concerning delinquent ildren, the superior court shall have authority to make and enforce such ders as it deems necessary or appropriate to punish the child, deter the child m the commission of further delinquent acts, assure that the safety of any her person will not be endangered and provide restitution to any victim. id court shall also have authority to grant and enforce injunctive relief, mporary or permanent in all proceedings concerning juvenile matters. If any der for the payment of money is issued by said court, including any order sessing costs issued under section 46b–134 or 46b–136, the collection of such oney shall be made by said court, except orders for support of children mmitted to any state agency or department, which orders shall be made yable to and collected by the department of administrative services. Where e court after due diligence is unable to collect such moneys within six nths, it shall refer such case to the department of administrative services for llection as a delinquent account. In juvenile matters, the court shall have thority to make and enforce orders directed to persons liable hereunder on tition of said department of administrative services made to said court in the me manner as is provided in section 17b–745, in accordance with the

provisions of section 17b–81, 17b–223, subsection (b) of section 17b–179, section 17a–90, 46b–129 or 46b–130, and all of the provisions of section 17b–745 shall be applicable to such proceedings. Any judge hearing a juvenile matter may make any other order in connection therewith within his authority to grant as a judge of the superior court and such order shall have the same force and effect as any other order of the superior court. In the enforcement of its orders, in connection with any juvenile matter, the court may issue process for the arrest of any person, compel attendance of witnesses and punish for contempt by a fine not exceeding one hundred dollars or imprisonment not exceeding six months. Following an adjudication by the court, a fee of two hundred dollars shall be assessed by the court against the parents, guardian or custodian of any child or youth whenever the services of the probation staff for juvenile matters is required.

(1949 Rev., § 2805; 1953, Supp. § 1188c; 1955, Supp. § 1576d; 1958 Rev., §§ 17–59, 51–302; 1969, P.A. 483; 1975, P.A. 75–171, § 1, eff. May 27, 1975; 1975, P.A. 75–602, § 3, eff. Jan. 1, 1976; 1976, P.A. 76–436, § 14, eff. July 1, 1978; 1977, P.A. 77–576, § 41, eff. July 1, 1978; 1977, P.A. 77–614, § 71, eff. Oct. 1, 1977; 1979, P.A. 79–567, § 2; 1980, P.A. 80–70, § 3; 1982, P.A. 82–472, § 128, eff. June 14, 1982; 1987, P.A. 87–421, § 9, eff. July 1, 1987; 1989, P.A. 89–219, § 2, eff. July 1, 1989; 1989, P.A. 89–273, § 1; 1993, P.A. 93–91, § 1, eff. July 1, 1993; 1995, P.A. 95–225, § 10, eff. Oct. 1, 1995; 1995, P.A. 95–254, § 2, eff. Oct. 1, 1995.)

Historical and Statutory Notes

Transfer of Section

This section, formerly set out as C.G.S.A. § 17–59, was transferred to C.G.S.A. § 51–302 in the 1977 Court Reorganization Supp.

This section, formerly set out as C.G.S.A. § 51–302, was transferred to C.G.S.A. § 46b–121 in Gen.St., Rev. to 1979.

Codification

"Central collections division of the department of finance and control", "division of central collections of the department of finance and control", "division of central collections", or "central collections division", wherever appearing, have been changed to "department of administrative services" pursuant to 1977, P.A. 77–614, § 71.

Gen.St., Rev. to 1991, changed the section heading from "Juvenile matters defined, authority of court" to "'Juvenile matters' defined. Authority of court. Fee".

The terms "commissioner of children and youth services", "department of children and youth services", and "council on children and youth services" have been changed to "commissioner of children and families", "department of children and families", and "council on children and families", respectively, pursuant to 1993, P.A. 93–91, § 1, which is classified to C.G.S.A. § 17a–2.

Amendments

1969 Amendment. 1969, P.A. 483, added the exception to the former third sentence and added the last sentence.

1975 Amendments. 1975, P.A. 75–171, § 1, substituted, in the former third sentence, "any state agency or department" for "the state welfare commissioner".

1975, P.A. 75–602, § 3, in the first sentence inserted "children and youth" and "or youth"; in the second sentence inserted "or youth", and added "or otherwise committed to or in the custody of the commissioner of children and youth services"; and inserted the third sentence.

1976 Amendment. 1976, P.A. 76–436, § 14, substituted, in the first sentence, "Juvenile matters shall be defined as" for "The juvenile court shall exercise exclusive jurisdiction over"; in the second sentence substituted "In such matters, the superior" for "Said" deleted "also" following "court shall", deleted ", within its territorial limits," following "to make and enforce", deleted "juvenile" following "who acknowledges before said"; in the third sentence, substituted "concerning juvenile matters" for "under this section"; in the fourth sentence substituted "In juvenile matters" for "The juvenile" and inserted "as amended," following "section 17–324,"; and added the last sentence.

Library References

American Digest System

Commitment, placement, and control of delinquent children; proceedings, see Infants ⇐153, 191 et seq.

Encyclopedias

Commitment, placement, and control of delinquent children; proceedings, see C.J.S. Infants §§ 34, 50 et seq.

WESTLAW Research

Infants cases: 211k[add key number].

United States Supreme Court

Preventive detention of juveniles, risk of crime prior to trial, procedural safeguards prior to detention, post-detention procedures, see Schall v. Martin, 1984, 104 S.Ct. 2403, 467 U.S. 253, 81 L.Ed.2d 207.

Notes of Decisions

Concurrent adjudications 1

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1. **Concurrent adjudications**

Where plaintiff had been placed in control of child born to another, plaintiff's rights of due process and equal protection were denied under color of Connecticut law by failure to furnish her with written notice of juvenile court hearing involving child's custody, failure to accord her right to appear and be heard, personally and through counsel, denial of her right to appear and failure of state court to grant relief by way of mandamus. James v. McLinden (D.C.1969) 341 F.Supp. 1233.

Delinquency petition would not be dismissed or disposition on adjudication of delinquency suspended whenever court rendered concurrent adjudication of "uncared for" status; range of dispositional options with adjudication of delinquency and with adjudication of "uncared for" status were not almost identical and the two adjudications did not necessarily overlap. In re Tyvonne (1989) 558 A.2d 661, 211 Conn. 151.

§ 46b–129. Commitment of child or youth. Petition for neglected, uncared-for, dependent child or youth

(a) Any selectman, town manager, or town, city, or borough welfare department, any probation officer, the Connecticut Humane Society, or the commissioner of social services, the commissioner of children and families or any child-caring institution or agency approved by the commissioner of children and families, a child or his representative or attorney or a foster parent of a child, having information that a child or youth is neglected, uncared-for or dependent, may file with the superior court which has venue over such matter a verified petition plainly stating such facts as bring the child or youth within the jurisdiction of the court as neglected, uncared-for, or dependent, within the meaning of section 46b–120, the name, date of birth, sex, and residence of the child or youth, the name and residence of his parents or guardian, and praying for appropriate action by the court in conformity with the provisions of this chapter. Upon the filing of such a petition, except as otherwise provided in subsection (e) of section 17a–112, the court shall cause a summons to be issued requiring the parent or parents or the guardian of the child or youth to appear in court at the time and place named, which summons shall be served not less than fourteen days before the date of the hearing in the manner prescribed by section 46b–128, and said court shall further give notice to the petitioner and to

the commissioner of children and families of the time and place when the petition is to be heard not less than fourteen days next preceding the hearing in question.

(b) If it appears from the allegations of the petition and other verified affirmations of fact accompanying the petition, or subsequent thereto, that there is reasonable cause to find that the child's or youth's condition or the circumstances surrounding his care require that his custody be immediately assumed to safeguard his welfare, the court shall either (1) issue an order to the parents or other person having responsibility for the care of the child or youth to show cause at such time as the court may designate why the court shall not vest in some suitable agency or person the child's or youth's temporary care and custody pending a hearing on the petition, or (2) vest in some suitable agency or person the child's or youth's temporary care and custody pending a hearing upon the petition which shall be held within ten days from the issuance of such order on the need for such temporary care and custody. The service of such orders may be made by any officer authorized by law to serve process, or by any probation officer appointed in accordance with section 46b–123, investigator from the department of administrative services, state police officer or indifferent person. The expense for any temporary care and custody shall be paid by the town in which such child or youth is at the time residing, and such town shall be reimbursed therefor by the town found liable for his support, except that where a state agency has filed a petition pursuant to the provisions of subsection (a) of this section, the agency shall pay such expense.

(c) When a petition is filed in said court for the commitment of a child or youth, the commissioner of children and families shall make a thorough investigation of the case and shall cause to be made a thorough physical and mental examination of the child or youth if requested by the court. The court after hearing on the petition and upon a finding that the physical or mental ability of a parent or guardian to care for the child or youth before the court is at issue may order a thorough physical or mental examination, or both, of the parent or guardian whose competency is in question. The expenses incurred in making such physical and mental examinations shall be paid as costs of commitment are paid.

(d) Upon finding and adjudging that any child or youth is uncared-for, neglected or dependent, the court may commit him to the commissioner of children and families for a maximum period of twelve months, unless such period is extended in accordance with the provisions of subsection (e) of this section, provided such commitment or any extension thereof may be revoked or parental rights terminated at any time by the court, or the court may vest such child's or youth's care and personal custody in any private or public agency which is permitted by law to care for neglected, uncared-for or dependent children or youth or with any person found to be suitable and worthy of such responsibility by the court. The commissioner shall be the guardian of such child or youth for the duration of the commitment, provided the child or youth has not reached the age of eighteen years or, in the case of a child or youth in full-time attendance in a secondary school, a technical school, a college or a

state-accredited job training program, provided such child or youth has not reached the age of twenty-one, by consent of such youth, or until another guardian has been legally appointed, and in like manner, upon such vesting of his care, such other public or private agency or individual shall be the guardian of such child or youth until he has reached the age of eighteen years or, in the case of a child or youth in full-time attendance in a secondary school, a technical school, a college or a state-accredited job training program, until such child or youth has reached the age of twenty-one years or until another guardian has been legally appointed. Said commissioner may place any child or youth so committed to him in a suitable foster home or in the home of a person related by blood to such child or youth or in a licensed child-caring institution or in the care and custody of any accredited, licensed or approved child-caring agency, within or without the state, provided a child shall not be placed outside the state except for good cause and unless the parents of such child are notified in advance of such placement and given an opportunity to be heard, or in a receiving home maintained and operated by the commissioner of children and families. In placing such child or youth, said commissioner shall, if possible, select a home, agency, institution or person of like religious faith to that of a parent of such child or youth, if such faith is known or may be ascertained by reasonable inquiry, provided such home conforms to the standards of said commissioner.

(e) Ninety days before the expiration of each twelve-month commitment made in accordance with the provisions of subsection (d) of this section and each extension made pursuant to the provisions of this subsection, the commissioner of children and families shall petition the court either to (1) revoke such commitment, in accordance with the provisions of subsection (g) of this section, or (2) terminate parental rights in accordance with the provisions of section 17a–112, or (3) extend the commitment beyond such twelve-month period on the ground that an extension is in the best interest of the child. The court shall give notice to the parent, parents or guardian and to the child or youth at least fourteen days prior to the hearing on such petition. Upon finding that an extension is in the best interest of the child, the court may extend the commitment for a period of twelve months. At such hearing the court shall determine the appropriateness of continued efforts to reunify the child or youth with his family. If the court finds that such efforts are not appropriate, the department of children and families shall within sixty days of such finding either (A) file a petition for the termination of parental rights, (B) file a motion to revoke the commitment and vest the custody and guardianship of the child on a permanent or long-term basis in an appropriate individual or couple or (C) file a written permanency plan with the court for permanent or long-term foster care, which plan shall include an explanation of the reason that neither termination of parental rights nor custody and guardianship is appropriate for the child. The court shall promptly convene a hearing for the purpose of reviewing such written plan.

(f) The commissioner of children and families shall pay directly to the person or persons furnishing goods or services determined by said commissioner to be necessary for the care and maintenance of such child or youth the reasonable

expense thereof, payment to be made at intervals determined by said commissioner; and the comptroller shall draw his order on the treasurer, from time to time, for such part of the appropriation for care of committed children or youth as may be needed in order to enable the commissioner to make such payments. Said commissioner shall include in his annual budget a sum estimated to be sufficient to carry out the provisions of this section. Notwithstanding that any such child or youth has income or estate, the commissioner may pay the cost of care and maintenance of such child or youth. The commissioner may bill to and collect from the person in charge of the estate of any child or youth aided under this chapter, including his decedent estate, or the payee of such child's or youth's income, the total amount expended for care of such child or youth or such portion thereof as any such estate or payee is able to reimburse.

(g) Any court by which a child or youth has been committed pursuant to the provisions of this section may, upon the application of a parent, including any person who acknowledges before said court paternity of a child or youth born out of wedlock, or other relative of such child or youth, the selectman or any original petitioner, or a licensed child-caring agency or institution approved by the commissioner, or said commissioner, and while such child or youth is under the guardianship of said commissioner, upon hearing, after reasonable notice to said commissioner, and, if said commissioner made the application, after reasonable notice to such parent, relative, original petitioner, selectman or child-caring agency or institution, upon finding that cause for commitment no longer exists, revoke such commitment, and thereupon such guardianship and all control of said commissioner over such child or youth shall terminate. The court may further revoke the commitment of any child or youth upon application by the commissioner or by the child or youth concerned and after reasonable notice to the parties affected upon a finding that such revocation will be for the best interest and welfare of such child or youth. No hearing shall be held for such reopening and termination of commitment or transfer of commitment more often than once in six months, except upon the application of said commissioner.

(h) Upon service on the parent, guardian or other person having control of the child or youth of any order issued by the court pursuant to the provisions of subsections (b) and (d) of this section, the child or youth concerned shall be surrendered to the person serving the order who shall forthwith deliver the child or youth to the person, agency, department or institution awarded custody in such order. Upon refusal of the parent, guardian or other person having control of the child or youth to surrender the child or youth as provided in the order, the court may cause a warrant to be issued charging the parent, guardian or other person having control of the child or youth with contempt of court. If the person arrested is found in contempt of court, the court may order such person confined until he purges himself of contempt, but for not more than six months, or may fine such person not more than five hundred dollars, or both.

(i) A foster parent shall have standing for the purposes of this section in superior court in matters concerning the placement or revocation of commit-

ment of a foster child living with such parent. A foster parent shall receive notice of any application to revoke commitment or any hearing on such application.

(1949 Rev., § 2634, subs. (a) to (e); 1949, Supp. § 264(a) to (e); 1953, Supp. § 1129c(a) to (e); 1955, Supp. § 1469d, subs. (a) to (e); 1957, P.A. 50; 1958 Rev., §§ 17–60a, 51–310; 1959, P.A. 293; 1967, P.A. 698; 1969, P.A. 794, § 7; 1971, P.A. 150; 1971, P.A. 184; 1971, P.A. 231; 1971, P.A. 253; 1972, P.A. 127, § 24; 1972, P.A. 294, § 18; 1973, P.A. 73–205, § 5; 1973, P.A. 73–546, § 2; 1973, P.A. 73–625, § 3, eff. June 17, 1973; 1974, P.A. 74–251, §§ 10, 11; 1975, P.A. 75–420, § 4, eff. June 25, 1975; 1975, P.A. 75–492, § 1, eff. July 3, 1975; 1975, P.A. 75–602, § 4, eff. Jan. 1, 1976; 1976, P.A. 76–436, §§ 16, 668, eff. July 1, 1978; 1977, P.A. 77–272; 1977, P.A. 77–273; 1977, P.A. 77–614, § 71, eff. Oct. 1, 1977; 1977, P.A. 77–614, § 521, eff. Jan. 1, 1979; 1977, P.A. 77–614, § 587, eff. June 2, 1977; 1978, P.A. 78–223, § 1, eff. July 1, 1978; 1978, P.A. 78–303, § 85, eff. June 6, 1978; 1979, P.A. 79–423; 1979, P.A. 79–579; 1979, P.A. 79–631, § 84; 1980, P.A. 80–483, § 121, eff. June 6, 1980; 1982, P.A. 82–181, §§ 1, 2; 1984, P.A. 84–449, § 5, eff. June 12, 1984; 1993, P.A. 93–91, § 1, eff. July 1, 1993; 1993, P.A. 93–262, § 1, eff. July 1, 1993; 1995, P.A. 95–238, § 4.)

Historical and Statutory Notes

Transfer of Section

This section, formerly set out as C.G.S.A. § 17–62, was transferred to C.G.S.A. § 51–310 in the 1977 Court Reorganization Supp.

This section, formerly set out as C.G.S.A. § 51–310, was transferred to C.G.S.A. § 46b–129 in Gen.St., Rev. to 1979.

Codification

"Welfare department", "commissioner of welfare", or "welfare" have been changed to "department of social services", "commissioner of social services", or "social services", respectively, wherever appearing, pursuant to 1975, P.A. 75–420, § 4.

"Central collections division of the department of finance and control", "division of central collections of the department of finance and control", "division of central collections", or "central collections division", wherever appearing, have been changed to "department of administrative services" pursuant to 1977, P.A. 77–614, § 71.

"Commissioner of human resources" was substituted for "welfare commissioner" or "social services commissioner" and "department of human resources" was substituted for "welfare department" or "social services department", pursuant to 1977, P.A. 77–614, § 521.

Technical changes were made to conform to Gen.St., Rev. to 1991.

The terms "commissioner of children and youth services", "department of children and youth services", and "council on children and youth services" have been changed to "commissioner of children and families", "department of children and families", and "council on children and families", respectively, pursuant to 1993, P.A. 93–91, § 1, which is classified to C.G.S.A. § 17a–2.

On and after July 1, 1993: "commissioner of income maintenance", "commissioner of human resources", or "commissioner on aging", wherever appearing, was changed to "commissioner of social services"; and "department of income maintenance", "department of human resources", or "department on aging", wherever appearing, was changed to "department of social services", pursuant to 1993, P.A. 93–262, § 1.

Amendments

1967 Amendment. 1967, P.A. 698, made the section applicable to a dependent child; divided first sentence of former subsec. (c) [now, (d)] following "commit him to the welfare commissioner" and added "or may vest his care * * * such responsibility by the court", and added, to the second sentence "and in like manner, * * * has been legally appointed".

1969 Amendment. 1969, P.A. 794, § 7, divided former subsec. (a) into subsecs. (a) and (b), and rewrote those subsections to read:

"(a) Any selectman, town manager, or town, city, or borough welfare department, any probation officer, the Connecticut Humane Society, or the welfare commissioner, the commission on youth services or any other child-caring institution or agency approved by said commissioner, having information that a child is neglected, uncared-for or dependent, may file with the juvenile court in the district where such child is resident a verified petition plainly stating such facts as bring the child within the jurisdiction of the court as neglected, uncared-for, within the meaning of section 1 of this act, or dependent, the name, date of birth, sex, and

Library References

American Digest System

Disposition and judgment in proceedings involving dependent, neglected, and delinquent children, see Infants ⇐221 et seq., 223 et seq.

Connecticut Practice

Physical and mental examinations, see Practice Book Annotated, 3d, Vol. 1, Superior Court Civil Rules, Moller and Horton, § 1048.

Encyclopedias

Disposition and judgment in proceedings involving dependent, neglected, and delinquent children, see C.J.S. Infants §§ 69 et seq., 77 et seq.

WESTLAW Research

Infants cases: 211k[add key number].

United States Supreme Court

Preventive detention of juveniles, risk of crime prior to trial, procedural safeguards prior to detention, post-detention procedures, see Schall v. Martin, 1984, 104 S.Ct. 2403, 467 U.S. 253, 81 L.Ed.2d 207.

§ 46b–135. Right to counsel and cross-examination

(a) At the commencement of any proceeding concerning the alleged delinquent of a child, the parent or parents or guardian and the child shall have the right to counsel and be so informed by the judge, and that if they are unable to afford counsel that counsel will be provided for them. Such counsel and such parent or parents or guardian or child shall have the rights of confrontation and cross-examination.

(b) At the commencement of any proceeding on behalf of a neglected, uncared-for, or dependent child or youth, the parent or parents or guardian of the child or youth shall have the right to counsel, and shall be so informed by the judge, and that if they are unable to afford counsel, counsel will be provided for them, and such counsel and such parent or guardian of the child or youth shall have the rights of confrontation and cross-examination.

(1958 Rev., §§ 17–66b, 51–316; 1967, P.A. 630, § 8, eff. June 22, 1967; 1969, P.A. 794, §§ 11, 12; 1975, P.A. 75–602, § 5, eff. Jan. 1, 1976; 1976, P.A. 76–436, § 23, eff. July 1, 1978; 1995, P.A. 95–225, eff. Oct. 1, 1995.)

Historical and Statutory Notes

Transfer of Section

This section, formerly set out as C.G.S.A. § 17–66b, was transferred to C.G.S.A. § 51–316 in the 1977 Court Reorganization Supp.

This section, formerly set out as C.G.S.A. § 51–31b, was transferred to C.G.S.A. § 46b–135 in Gen.St., Rev. to 1979.

Amendments

1969 Amendment. 1969, P.A. 794, § 11, in subsec. (a), substituted "At the commencement of" for "In", inserted "on behalf of a delinquent child", deleted "or other persons having control of the child" following "guardian", inserted "and be so informed by the judge, and that if they are unable to afford counsel that counsel will be provided for them" and deleted "other person" following "guardian".

1969, P.A. 794, § 12, added subsec. (b).

1975 Amendment. 1975, P.A. 75–602, § 5, in subsec. (b) inserted "or youth" following "child" twice, and deleted "parents" following "and such parent,".

1976 Amendment. 1976, P.A. 76–436, § 23, deleted, from subsecs. (a) and (b), "in the juvenile court" following "commencement of any proceeding".

46b–136. Appointment of attorney to represent child or youth and parent or guardian

n any proceeding on a juvenile matter the judge before whom such proceed- is pending shall, even in the absence of a request to do so, provide an orney to represent the child or youth, his parent or parents, guardian or er person having control of the child or youth, if such judge determines that interests of justice so require, and in any proceeding in which the custody of hild is at issue, such judge shall provide an attorney to represent the child may authorize such attorney or appoint another attorney to represent such ld or youth, parent, guardian or other person on an appeal from a decision such proceeding. Where, under the provisions of this section, the court so oints counsel for any such party who is found able to pay, in whole or in t the cost thereof, it shall assess as costs against such parents, guardian, or todian, including any agency vested with the legal custody of the child or th, the expense so incurred and paid for by the court in providing such nsel, to the extent of their financial ability to do so.

58 Rev., §§ 17–66c, 51–3; 1967, P.A. 630, § 9, eff. June 22, 1967; 1969, P.A. 794, 0; 1973, P.A. 73–188; 1975, P.A. 75–277; 1975, P.A. 75–602, § 6, eff. Jan. 1, 1976; 6, P.A. 76–235, § 1, eff. May 25, 1976; 1976, P.A. 76–436, § 24, eff. July 1, 1978.)

Historical and Statutory Notes

nsfer of Section

his section, formerly set out as C.G.S.A. 7-66c, was transferred to C.G.S.A. § 51-317 he 1977 Court Reorganization Supp.

his section, formerly set out as C.G.S.A. 1-3, was transferred to C.G.S.A. § 46b–136 Gen.St., Rev. to 1979.

endments

969 Amendment. 1969, P.A. 794, § 10, sub- uted, in the first sentence, "even in the ab- ce of a request to do so" for "if he deter- nes that the interests of justice so require" erted "if such judge determines that the in- ests of justice so require"; and added the ond sentence relating to assessment of costs appointed counsel.

973 Amendment. 1973, P.A. 73–188, added visions of the first sentence authorizing the attorney or appointment of another attorney on appeal.

1975 Amendments. 1975, P.A. 75–277, inserted, in the first sentence, requirement for provision of attorney for child in custody proceedings.

1975, P.A. 75–602, § 6, inserted, in four places, "or youth" following "child"; and deleted, from the first sentence, "parents," preceding "guardian or other person".

1976 Amendments. 1976, P.A. 76–235, § 1, substituted, in first sentence, "is at issue" for "may be affected" following "the custody of a child."

1976, P.A. 76–436, § 24, in the first sentence substituted "on a juvenile matter" for "in the juvenile court" following "In any proceeding", and deleted "to the superior court" at the end.

Law Review Commentaries

Parental autonomy, family rights and the illegitimate. Aviam Soifer, 7 Conn.L.Rev. 1 (1974).

Steprelationships in Connecticut. Shirley R. Bysiewicz, 60 Conn.B.J. 378 (1986).

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Proceedings involving dependent, neglected, or delinquent children; right to counsel, see Infants ⇐205.

nnecticut Practice

Appointment of attorney, see Practice Book Annotated, 3d, Vol. 1, Superior Court Civil Rules, Moller and Horton, § 1053.

Sec. 4061. Review by the Court; Errors Considered

(Amended May 21, 1992, to take effect Oct. 1, 1992; amended April 22, 1996, to take effect Sept. 3, 1996.*)

The court may reverse or modify the decision of the trial court if it determines that the factual findings are clearly erroneous in view of the evidence and pleadings in the whole record, or that the decision is otherwise erroneous in law.

The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The court may in the interests of justice notice plain error not brought to the attention of the trial court.

In jury trials, where there is a motion, argument, or offer of proof or evidence in the absence of the jury, whether during trial or before, pertaining to an issue that later arises in the presence of the jury, and counsel has fully complied with the requirements for preserving any objection or exception to the judge's adverse ruling thereon in the absence of the jury, the matter shall be deemed to be distinctly raised at the trial for purposes of this rule without a further objection or exception provided that the grounds for such objection or exception, and the ruling thereon as previously articulated, remain the same.

If the court deems it necessary to the proper disposition of the cause, it may remand the case for a further articulation of the basis of the trial court's factual findings or decision.

It is the responsibility of the appellant to provide an adequate record for review as provided in Sec. 4007.

(Adopted March 30, 1979, to take effect July 1, 1979; amended Oct. 15, 1984, to take effect Jan. 1, 1985; amended July 16, 1986, to take effect Oct. 1, 1986; amended May 21, 1992, to take effect Oct. 1, 1992; amended April 22, 1996, to take effect Sept. 3, 1996.*)

Sec. 4062. (Reserved)

Sec. 4063. (Reserved)

*Footnotes are located at the end of this section.

CHAPTER 37A

NEGLECT, UNCARED FOR, DEPENDENT AND TERMINATION

Sec. 1040.1. Initiation of Judicial Proceeding

(1) The petitioner shall set forth with reasonable particularity, including statutory references, the specific conditions which have resulted in the situation which is the subject of the petition.

(2) A summary of the facts substantiating the allegations of the petition shall be attached thereto and shall be incorporated by reference.

(3) A summons accompanying a petition alleging neglect, uncared for or dependency shall be served on the parent not less than fourteen days before the date of the hearing, which shall be held not more than forty-five days from the date of filing the petition.

(4) A summons accompanying a petition alleging termination shall be served on the parent at least ten days prior to the date of the hearing, which shall be held not more than thirty days from the filing of the petition.

(5) When placement of a child has been effected prior to filing of a petition, venue shall be in the district wherein the custodial parent was living at the time of placement.

(6) If the identity or present location of a parent is unknown when a petition is filed, an affidavit shall be attached reciting the efforts to identify and locate that parent. The court shall require reasonable efforts to identify and locate the absent parent.

(7) If the address of any person entitled to personal service is unknown, service may be by publication as ordered by the court.

(Adopted June 28, 1993, to take effect Oct. 1, 1993; amended June 23, 1995, to take effect Oct. 1, 1995.*)

Sec. 1041.1. Order of Temporary Custody

(1) Upon proper application therefor, an order of temporary custody may be issued ex parte by the court at the time of the filing of the petition or subsequent thereto. The application must be supported by a sworn state-

* Footnotes for amended sections are located on page 316.21 et seq.

ment alleging such facts as would support a finding of probable cause to believe that the child is suffering from serious physical illness or serious physical injury or is in immediate physical danger from the surroundings and that immediate removal from such surroundings is necessary to ensure the child's safety.

If the application is filed subsequent to the filing of the petition, a motion to amend the petition or to modify protective supervision shall be filed no later than the next business date before the hearing on any order to show cause or temporary custody.

(2) The order of temporary custody shall contain a statement of the respondent's right to counsel and to remain silent, and of the hearing to be held within ten days of the operative date of the order solely on the issue of the continued need for protective custody.

(3) To ensure the continued good health of the child, the temporary custodian upon medical or dental advice may authorize medical treatment, including surgery and dentistry, including dental surgery. Said custodian shall exercise due diligence to inform the parent prior to taking such action, and in all cases shall send notice to the parent by first class mail to the last known address informing the parent of the action taken, necessity and outcome.

(4) When an emergency medical situation exists which requires the immediate assumption of temporary custody of a child in order to save the child's life, the application for a temporary custody order shall be filed together with a neglect or uncared for petition. Two physicians under oath must attest to the need for such medical treatment. Oral permission by the judge may be given after receiving sworn oral testimony of two physicians that the specific surgical or medical intervention is absolutely necessary to preserve the child's life. The court may grant the temporary custody order ex parte or may schedule an immediate hearing prior to issuing said order. At any hearing the two physicians shall be available for testifying, and the court shall appoint counsel for the child.

(Adopted June 28, 1993, to take effect Oct. 1, 1993.)

CHAPTER 38A

NEGLECT, UNCARED FOR, DEPENDENT AND TERMINATION HEARING

Sec. 1042.1. Adjudicatory Hearing

(1) The court shall first determine whether all necessary parties are present and that the rules governing service for nonappearing parties have been complied with, and shall note these facts for the record. The court shall then inform the unrepresented parties of the substance of the petition.

(2) Notwithstanding any prior statements acknowledging responsibility, the court shall inquire whether the allegations of the petition are presently admitted or denied. This inquiry shall be made of the custodial parent in neglect, uncared for or dependent matters; and of all appearing parents in termination matters. A written plea of nolo contendere signed by the respondent may be accepted by the court. Before accepting an admission or plea of nolo contendere, the court shall determine whether the right to counsel has been waived, and that the parties understand the content and consequences of their admission or plea. If the allegations are admitted or the

CHAPTER 39A

RIGHTS OF PARTIES

Sec. 1048.1. Right to Counsel and to Remain Silent

(1) The court shall advise and explain to the parents, child or youth their right to silence and to counsel prior to commencement of any proceeding.

(2) Said parties have the rights of confrontation and cross-examination and may be represented by counsel in each and every phase of any and all proceedings in juvenile matters, including appeals, and if they are unable to afford counsel, counsel will be appointed to represent them if such is their request. The court shall appoint counsel for these parties or any of them (a) upon request and upon a finding that the party is, in fact, financially unable to employ counsel, or (b) in the case of counsel for the child, whether a request is made or not, in any proceeding on a juvenile matter in which the custody of a child is at issue, or if in the opinion of the court the interests of the child and the parents conflict, or (c) in the case of counsel for the child and the parent, whether a request is made or not, if in the opinion of the court a fair hearing necessitates such an appointment. The court may appoint counsel for (i) an unidentified parent or (ii) an absent parent who has received only constructive notice of termination proceedings, for the limited purposes of conducting a reasonable search for the unidentified or absent parent and reporting to the court before any adjudication. The petitioner shall be represented by counsel in contested matters. Where the court so appoints counsel for any such party who is found able to pay, in whole or in part, the cost thereof, it shall assess as costs against such parent or custodian, including any agency vested with the legal custody of the child, the expense so incurred and paid for by the court in providing such counsel, to the extent of their financial ability to do so.

Either the petitions or the notices of initial hearings on petitions, including revocation or motions to modify dispositions shall contain a statement of the respondent's right to counsel.

(3) Any child shall have the right to remain silent at any stage of the proceedings. No parent who is the subject of a petition shall be compelled to testify if the testimony might tend to incriminate in any criminal proceeding or to establish the validity of the facts alleged in the petition.

(Adopted June 28, 1993, to take effect Oct. 1, 1993; amended June 23, 1995, to take effect Oct. 1, 1995.*)

Sec. 1049.1. Hearing Procedure

(1) All hearings are essentially civil proceedings except where otherwise provided by statute. Testimony may be given in narrative form and the proceedings shall at all times be as informal as the requirements of due process and fairness permit.

(2) Any indigent party may request subpoenas for persons to testify on the issues before the court.

(Adopted June 28, 1993, to take effect Oct. 1, 1993; amended June 21, 1996, to take effect Oct. 1, 1996.*)

* Footnotes for amended Sections are located on pages 316.21 et seq.

Supreme Court, U.S.
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No. 97-1573

In The
Supreme Court Of The United States
October Term, 1997

IN RE: ELISABETH H.

IN RE: CATHERINE H.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Was the Connecticut Appellate Court correct in dismissing the appeal on the ground of mootness, due to the fact that the children who were the subject of the juvenile court proceeding had reached the age of majority?

2. Did dismissal of the appeal based on mootness under state law in any way violate the Petitioners' Constitutional rights?

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

IN RE: ELISABETH H.
IN RE: CATHERINE H.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF
CONNECTICUT

RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

JURISDICTION

The Petitioners cite 28 U.S.C. § 1257(a) to invoke the jurisdiction of this court. Neither the decision of the Connecticut Appellate Court, see Appendix B of the Petition, nor the decision of the Connecticut Supreme Court, see Appendix A of the Petition, addressed the validity of a treaty or statute of the United States, or addressed the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States, or addressed any title, right, privilege, or immunity specially set up or claimed under the constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

The United States Supreme Court has no jurisdiction over this case in that the sole issue decided by the Connecticut Appellate Court, and which the Connecticut Supreme Court declined to review, is a matter of state law, mootness of the proceedings below. The United States Supreme Court will not pass on the constitutionality of a state statute or regulation before state courts have had an opportunity to do so. Adler v. Board of Education, 342 U.S. 485, 496 (1952). When the state court decision rests on an independent and adequate state ground, the United States Supreme Court is without jurisdiction to review the decision. Enterprise Irrigation District v. Canal Co., 243 U.S. 157, 164 (1917); Abie State Bank v. Bryan, 282 U.S. 765, 773 (1931); Klinger v. Missouri, 13 Wall 257, 263 (1871); Fox Film Corp. v. Muller, 296 U.S. 207, 210 (1935).

COUNTERSTATEMENT OF THE CASE

On September 8, 1993, Elisabeth H. and Catherine H. were removed from their parents' home by the Danbury police in

response to a call from Barbara C., their half-sister. Barbara C. reported that Catherine C. was incoherent, that she had been threatened by her mother and that Elisabeth was distraught and at risk of injuring herself. Tr. 12/6/93 at 101; States Ex. E; Respondents' Ex. 2; Tr. 2/9/94 at 123-24. Barbara C. also called the careline of the Connecticut Department of Children and Families ("DCF"). At the time of their removal, the young adults Catherine H. (d.o.b. 11/10/77) and Elisabeth H. (d.o.b. 3/23/79) were fifteen and fourteen years of age respectively. On September 8 and 9, 1993 the young adults reported abusive treatment in the home and were interviewed by a psychiatrist, a psychiatric nurse and a DCF social worker. These professionals reported that the young adults gave reports of abusive treatment in the home and were fearful of returning home and at risk of running away if forced to return. Tr. 12/6/93 at 100-104. Both young adults reported depression and Catherine reported suicidal ideations Tr. 12/6/93 at 75-76.

On September 9, 1993 the Petitioner Parents signed a thirty day voluntary placement agreement with DCF. On October 1, 1993 the Petitioner Parents refused to extend the voluntary placement agreement, although the young adults were still fearful of returning home and stated they would run away if forced to return. Tr. 12/13/93 at 114-116. DCF filed an application for an order of temporary custody (OTC)[1]

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[1] The OTC was filed pursuant to Conn. Gen. Stat. § 46b-129(b) which provides that an OTC may be granted when "there is reasonable cause to find that the child's condition or the circumstances surrounding his care require that his custody be immediately assumed to safeguard his welfare." Conn. Gen. Stat. § 17a- 101g(c) similarly provides that DCF may remove a child if there is "probable cause to believe that the child is suffering from serious physical illness or is in immediate physical danger from his surroundings and that immediate removal from his surroundings is necessary to insure the child's safety."

and neglect/ uncared for petitions[2] with the Superior Court for Juvenile Matters in Danbury on October 5, 1993. Trial on both the OTC and neglect/uncared for petitions was commenced on December 6, 1993. The OTC was sustained by the trial court on July 14, 1994 and a subsequent motion dated September 12, 1994 to vacate the OTC was denied.

On December 20, 1994, seven months after completion of the state's case and after the court had heard evidence during twenty different trial dates, the Petitioner-Parents' trial counsel, Attorney Ronan, moved to withdraw. Tr. 12/20/94 at 4-9. The Petitioner-Parents then discharged their privately retained counsel after the proceedings on December 20, 1994.[3] The court fully canvassed the parents as to their intent to discharge counsel and to proceed pro se. Tr. 12/27/94 at 18-22. The Court denied the motion to withdraw because of the risk of further delay, risk of mistrial and the inability of new counsel to enter the proceedings at such a late stage. Tr. 12/27/94 at 32-35, 56-57, 60-63.

Attorney Ronan filed a second motion to withdraw on March 1, 1995. The parents filed pro se appearances in lieu of Attorney Ronan. Tr. 3/1/95 at 34-35. Because the parents asserted they could not pay fees owed to Attorney Ronan, DCF raised the option of the parents applying for court appointed counsel and Attorney Ronan being so appointed.

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[2] Pursuant to Conn. Gen. Stat. § 46b-129(a) and Conn. Gen. Stat. § 46b-120.

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[3] Attorney Ronan stated " ...they have discharged me ...and I have no attorney client relationship with them at this point...Mr. and Mrs. H. are prepared to continue their case pro se. I have had detailed discussions with them regarding ...the risks of...doing so and I am of the opinion that they have a superior command of the facts, that they can be objective and that they...have been and would continue to read up...up on law and procedure in order to protect their rights." Tr. 12/27/94 at 6.

The parents refused this option. Tr. 3/1/95 at 6, 21. The Court accepted the pro se appearances in addition to Attorney Ronan's appearance and again denied the motion to withdraw. Tr. 3/1/95 at 34.[4] On March 14, 1995, Attorney Ronan filed a third motion to withdraw. The Court again canvassed the parents and they again remained firm in their decision to discharge Attorney Ronan and to proceed pro se.[5] Tr. 3/14/95 at 16-17. The Court, once again, denied the third motion to withdraw. Attorney Ronan appealed from the trial court's March 14, 1995 decision and that appeal was dismissed by the Appellate Court. Attorney Ronan never attended the proceedings after March 14, 1995. The record indicates that despite the trial court's reluctance to release Attorney Ronan from his appearance, Mr. and Mrs. H. repeatedly insisted on representing themselves, understood the ramifications of that decision and had the ability to represent themselves. Tr. 12/27/94 at 12, 18-22; Tr. 3/14/95 at 17-18.

The trial court adjudicated Catherine H. and Elisabeth H. neglected, abused and uncared for within the meaning of Conn. Gen. Stat. § 46b-120 and on November 7, 1995

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[4] The parents refused to cooperate any longer with Attorney Ronan. Tr. 12/27/94 at 62.

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[5] Parents' trial counsel stated "...I have kept a dialogue going with Mr. and Mrs. H. ....they are ready, as they were in December, to represent themselves. They have a financial need to do that and they have, I believe the capacity to do so." Tr. 3/14/95 at 16-17. The canvass of the court included the following: "Ms. H.: We stand prepared, your honor to defend ourselves and present testimony and witnesses. The court: And you've taken into consideration all of the consequences and the fact that you'll be held to the same standards as any pro se natural party who acts as their own attorney, the same standards of any attorney at law? You understand that ? Mrs. H.: Yes, we do, your honor. Mr. H.: Yes, we do, your honor." Tr. 3/14/95 at 17-18.

committed Elisabeth H. and Catherine H. to the care and custody of DCF for a period not to exceed twelve months. On November 16, 1995, the Petitioner Parents filed an appeal with the Connecticut Appellate Court.

On December 1, 1995, DCF filed a motion to dismiss for lack of subject matter jurisdiction due to mootness. The motion to dismiss was denied on January 10, 1996.

By letter dated March 11, 1997, the Appellate Court directed the parties to be prepared to address the additional issue of whether the appeal is moot. On March 17, 1997, the date of oral argument, Catherine H. was nineteen years of age and Elisabeth H. was six days from her eighteenth birthday. The Respondent DCF argued that there was no effective relief that could be granted and that there were no collateral consequences. On June 24, 1997, the Connecticut Appellate Court dismissed the appeal as moot. The Petitioner parents filed for certification to appeal with the Connecticut Supreme Court on July 7, 1997.[6] The Connecticut Supreme Court denied the petition for certiorari on September 18, 1997.

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[6] The Petitioners framed two issues in their petition for certification with the Connecticut Supreme Court. "A. Whether the Appellate Court improperly dismissed the appeal as moot concluding that there were no collateral consequences and that it did not satisfy the capable of repetition yet evading review doctrine . B. Whether the Appellate Court's interpretation of Section 17a-145-101(o) of the Regulations of Connecticut State Agencies was unconstitutional." Therefore, the issues concerning ineffective assistance of counsel and first amendment free exercise were not presented to the Connecticut Supreme Court.

REASONS FOR DENYING THE WRIT[7]

I. THE CONNECTICUT APPELLATE COURT WAS CORRECT IN ITS DECISION THAT THE APPEAL WAS MOOT AND THE ISSUE OF MOOTNESS IS AN ISSUE OF STATE LAW ENABLING A STATE APPELLATE COURT TO INTERPRET THE PARAMETERS OF ITS JURISDICTION

The issue of mootness is an issue that is directly related to a court's monitoring of its jurisdiction. Loisel v. Rowe, 233 Conn. 370, 378, 670 A.2d 323 (1995); First Trust National Ass'n v. Hitt, 36 Conn. App. 171, 174, 649 A.2d 798 (1994). "Mootness implicates the subject matter jurisdiction of this court." Sadlowski v. Manchester, 206 Conn. 579, 583, 538 A.2d 1052 (1988). The United States Supreme Court should not readily interfere with a state court's interpretation of its own jurisdiction. Indeed, in citing only Connecticut case law on the question of mootness in its petition for writ of certiorari, the Petitioners concede that the issue of mootness is a matter of state law. Connecticut case law has held that where no practical relief can

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[7] The sole issue treated by the Connecticut Appellate Court decision was whether the appeal was moot. Petition Appendix B. The issues as to the sixth amendment right to counsel and the first amendment right to free exercise of religion were not addressed by the Connecticut Appellate Court decision which is the subject of this petition. These issues were also not raised in the application for certification to the Connecticut Supreme Court. The issues concerning the right to counsel and the first amendment right to freedom of religion are not appropriately reviewable pursuant to this petition for certiorari. Adler v. Board of Education, 342 U.S. 485, 496 (1952).

be granted on appeal, the appeal must be dismissed. In Re Romance M., 229 Conn. 345, 641 A.2d 378 (1994); McDuffee v. McDuffee 39 Conn. App. 412, 664 A.2d 1164 (1995); Clement v. Clement, 34 Conn. App. 641, 643 A.2d 874 (1994). The test for determining mootness is not "[w]hether the [Petitioners] would ultimately be granted relief ....The test, instead, is whether there is any practical relief this court can grant the appellant." Citicorp Mortgage, Inc. v. Hairston, 34 Conn. App. 138, 138-39, 640 A.2d 146 (1994).[8]

In their Connecticut Appellate Court brief the Petitioners requested reversal of the trial court decision, and remand for a new trial. Petitioners' Appellate Brief p. 34. In matters concerning child welfare in Connecticut, jurisdiction resides in the juvenile court but only insofar as the matter involves "children" or "youths" as defined in Conn. Gen. Stat. § 46b-120.[9] By the time of the Connecticut Appellate decision, both young adults had reached the age of majority. Conn. Gen. Stat. § 1-1d. If remanded the trial court would have had no authority to enter further orders with respect to the young adults.

The Connecticut Supreme Court has held that it is sufficient to defeat mootness that potential collateral consequences from the trial court decision exist. Housing Authority v. Lamothe, 225 Conn. 757, 627 A.2d 367

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[8] "Practical" is defined in Webster's II New Riverside Dictionary (1984) as 1. serving a purpose: useful. 2. resulting from or involving experience, practice or use rather than theory or speculation. 3. a. Inclined to action :unspeculative. b. down to earth: sensible. 4. Being so in effect: virtual. (emphasis added).

[9] "Child" is defined as any person under sixteen years of age. "Youth" is defined as any person sixteen to eighteen years of age. Conn. Gen. Stat. § 46b-120.

(1993); Sgarellino v. Hightower, 13 Conn. App. 591, 538 A.2d 1065 (1988). However in each of the cases cited by Petitioner parents, unlike the instant case, there existed real, tangible potential legal consequences to the lower court decision. In the instant petition for writ of certiorari, the Petitioner parents assert only one alleged collateral consequence of the trial court decision that, due to the adjudication of neglect and commitment of the young adults to DCF, they are precluded from becoming foster parents under DCF regulations.[10] The Petitioners failed to establish that there existed any meaningful intent or possibility that they would ever apply to become foster parents. It may be that it is not necessary for the collateral legal consequences to exist or to even be imminent in order to defeat mootness, but the collateral legal consequences must at least be potential, practical and rise above the level of mere fiction.

Petitioners argue that they are not precluded under the DCF regulations from being foster parents until there is a dispositional order of commitment.[11] The clear wording of

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[10] "No license shall be granted if, within five years of the date of application for license, the provider of anyone regularly residing in the home or any substitute caregiver ...has had a child removed from his care or custody for reasons of child abuse or neglect." DCF Reg. § 17a-145-101(o). Just prior to oral argument this regulation was amended to read that the granting of a license or approval shall be denied "if any member of the household of a foster family or prospective family....has had a minor removed from their care because of child abuse or neglect." DCF Reg. § 17a-145-152 (effective February 20, 1997).

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[11] Child welfare proceedings in Connecticut usually proceed in two stages. In cases involving imminent physical danger to the children an emergency ex-parte OTC is obtained by the Juvenile Court, Conn. Gen. Stat. § 46b-129(b); Conn. Gen. Stat. § 17a-101g(c). By statute a hearing on the OTC must be convened within 10 days of the ex-parte order. Id. An order of temporary

the DCF regulations refer to individuals who have had children removed from their care and custody. See note 10.

Individuals who have had a child removed under an OTC under Conn. Gen. Stat. § 17a-101g(c) and Conn. Gen. Stat. § 46b-129(b) are not eligible to be foster parents if that OTC is upheld after evidentiary hearing. See note 10. The OTC in this case was sustained by order of the trial court on July 15, 1994.

Petitioners claim that for DCF regulations to prohibit parents whose children have been removed by confirmed OTCs from being foster parents is a violation of federal due process rights. The Petitioners fail to cite any case in support of this proposition. It is clear that the Petitioners had an evidentiary hearing before the OTC was confirmed so due process protections were in place before the regulations applied.

custody transfers custody only, not guardianship. Alongside the order of temporary custody a neglect petition is filed, seeking an adjudication of the child as neglected. Conn. Gen. Stat. § 46b-129(a). Conn. Gen. Stat. § 46b-120 states "a child or youth may be found "neglected" who (A) has been abandoned or (B) is being denied proper care and attention, physically, educationally, emotionally or morally or (C) is being permitted to live under conditions, circumstances or associations injurious to his well-being; or (D) has been abused... ." Once the juvenile court enters an adjudication of neglect, the court then enters dispositional orders, committing the child to DCF for up to twelve months, returning the child home under court monitored protective supervision or transferring custody and guardianship to an appropriate third party. A dispositional order of commitment passes both custody and guardianship of the child. Conn. Gen. Stat. § 46b-129(d).

II. THE SIXTH AMENDMENT RIGHT TO COUNSEL DOES NOT APPLY TO PROCEEDINGS UNDER NEGLECT PETITIONS WHICH ARE CIVIL IN NATURE. THE ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL WAS NOT PRESERVED FOR APPEAL

As argued above, the second issue raised in this Petition for Writ of Certiorari, whether the parents were denied effective assistance of counsel, is not properly reviewable by the United States Supreme Court because it was not addressed by the Connecticut Appellate Court nor raised with the Connecticut Supreme Court. Moreover, the parents lack standing to make this claim, as they never applied for a court appointed attorney and specifically waived their right to counsel. However, even if the second issue raised by the Petitioners were reviewable, the Petition grossly misstates the law concerning right to counsel in child protection cases. The Sixth Amendment right to counsel applies solely to criminal proceedings.[12] However the Connecticut Supreme Court has spoken concerning the right to counsel in the more grievous termination of parental rights proceedings, which result in the permanent elimination of the biological parents' rights to the child. "Neither the Sixth Amendment to the United States Constitution nor Article First, section 8 of the Connecticut Constitution can be extended to a parent in a termination of parental rights hearing to provide a right to effective assistance of counsel." State v. Anonymous, 179 Conn. 155, 159, 425

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[12] "In all criminal prosecutions, the accused shall enjoy the right ...to have the assistance of counsel for his defense." Conn. Gen. Stat. § 46b-121 places juvenile neglect matters within the civil session of the Connecticut Superior Court.

A.2d 939 (1979). See also State v. Goffe, 41 Conn. App. 454, 474, 676 A.2d 1377, 1386 (1996).[13]

Furthermore, the United States Supreme Court has held that due process does not automatically require the appointment of counsel for indigent parties even in a termination of parental rights action. If counsel is needed that determination is left "to be answered in the first instance by the trial court." Lassiter v. Department of Social Services, 452 U.S. 18, 27, 101 S. Ct. 2153, 2162 (1981). Where the loss of personal freedom is not at stake, there is a presumption against automatic court appointed counsel. Id. In the instant case, the trial court appropriately weighed the

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[13] In certain situations involving "quasi-criminal" proceedings the Connecticut Supreme Court has held that state and federal constitutional due process requires court appointed counsel. Lavertue v. Niman, 196 Conn. 403, 493 A.2d 213 (1985). Neglect proceedings are not "quasi-criminal" proceedings. See In Re Bobby Jo S., 10 Conn. App. 36, 40, 521 A.2d 219 (1987); In Re Felicia S. and Janelle D., 1993 WL 576430 (Conn. Super.). In Lavertue, which involved a paternity action, there was the risk of contempt and imprisonment for failure to comply with support enforcement orders. By contrast, in neglect proceedings the sole focus is on the condition of the child to determine whether the child meets the definition of neglected under Conn. Gen. Stat. § 46b-120. The adjudication of neglect is entered as to the child, not as to the parents. There is no specific finding of culpability as to the parents and there is no risk of imprisonment of the parents from any orders entered in the neglect proceedings. The sole risk is that the parents will lose on a temporary basis, guardianship rights to their child. Although there are provisions for the state to proceed against a parent for reimbursement of money spent on a child while in the custody of the state, Conn. Gen. Stat. § 17a-10, 17b-745, these provisions do not raise the risk of contempt or imprisonment. Also, unlike the paternity action, these provisions do not create a support obligation but merely implement the existing obligation of the biological parent to support their child.

various interests and risk of error and made a decision consistent with due process.[14]

Even in criminal cases involving the Sixth Amendment right to counsel, there is the countervailing right of an individual to represent oneself. Connecticut has refused to recognize inadequate pro se performance as a valid reason to grant a mistrial in as serious a matter as a criminal murder trial. State v. Day., 233 Conn. 813, 830, 661 A.2d 539 (1995). The United States Supreme Court found a deprivation of a constitutional right to conduct one's own defense when the defendant was forced to accept court-appointed counsel in a criminal matter, and held that a defendant need not have "technical legal knowledge as such...to perform an assessment of [the pro se party's] knowing exercise of the right to defend self." Faretta v. California , 422 U.S. 806, 836 (1975). The Petitioners knowingly and intelligently and in an informed manner waived their right to counsel.[15] See notes 3, 4 and 5 supra.

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[14] Lassiter requires that the three factors in Matthews v. Eldrige, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1986), be weighed in determining whether due process requires appointment of counsel in a civil termination of parental rights case: (1) the private interests at stake, (2) the government's interest, and (3) the risk that the procedure will lead to an erroneous decision. Here, because the case did not involve a termination of parental rights, the private interests of the Petitioners are not nearly as high as in Lassiter. On the other hand, the interests of the government and the children in bringing the trial to a conclusion and in not inviting a mistrial by allowing new counsel to appear in the midst of trial were compelling.

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[15] The Respondent contends that the Matthews v. Eldridge due process balancing test, discussed supra, rather than the Faretta standard for criminal proceedings is the test that should be applied. However, even if the Faretta test were applied the canvass of the trial court, particularly the last canvass on 3/14/95, met the Faretta criteria, see note 5, supra. The trial court made a thorough inquiry

The Petitioners failed to preserve the issue of ineffective assistance of counsel for appellate review. As argued above, the Petitioners had no constitutional right to counsel and raised no claim of any constitutional right[16] to counsel in the proceedings below, in fact they vociferously argued for

and was satisfied that the Petitioners: (1) were clearly advised of their right to assistance of counsel, including their right to assignment of counsel; (2) possessed the intelligence and capacity to appreciate the consequences of the decision to represent themselves; (3) comprehended the nature of the proceedings and any additional facts essential to the broad understanding of the case; and (4) were made aware of the dangers and disadvantages of self-representation. Faretta, supra; State v. Day, supra at 813; State v. Townsend, 211 Conn. 215, 222, 558 A.2d 669(1989); State v. Gethers, 197 Conn. 369, 379, 497 A.2d 408 (1985).

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[16] Review of the record does not support that a constitutional violation clearly exists and clearly deprived the Petitioners the right to a fair trial, in fact the record supports that the Petitioners waived their right to counsel. Finally the Petitioners are educated, intelligent and understood the nature of the proceedings and the facts and issues at trial. Their own trial counsel stated they were able to conduct their defense. See notes 3, 4 and 5. The Petitioners had the benefit of counsel for the entire presentation of the State's case. The Petitioners presented witnesses, filed motions, and a trial brief and conducted a full defense. The Petitioners' allege no errors that they made in representing themselves that materially affected the outcome of trial. The Petitioners' similarly failed to establish a statutory right to counsel in this case. Conn. Gen. Stat. § 46b-135 is a statute for the indigent, for those "unable to afford counsel"; § 46b-136 allows the trial court in its discretion to appoint counsel if the "interest of justice" so requires. Mandated appointment under Conn. Gen. Stat. § 46b-135 specifically requires a finding of financial eligibility. Connecticut Practice Book § 1048.1 (now Practice Book § 34-1(1998 rev.)) states essentially the same entitlements as are expressed in the two statutes. Because the Petitioners never requested appointment of counsel, the trial court was not called upon to make any finding of financial eligibility, and the record does not support the need for the court to have appointed such counsel in the "interest of justice."

the right to represent themselves. Generally the Connecticut law does not excuse the failure of counsel to raise an issue at the trial level. Aksomitas v. Aksomitas, 205 Conn. 93, 97; 529 A.2d 1314 (1987). Connecticut Practice Book § 4061 (now 60-5(1998 rev.)).

III. THE EVIDENCE DID NOT ESTABLISH ANY NEXUS BETWEEN A REQUIRED RELIGIOUS PRACTICE AND THE ALLEGATIONS OF NEGLECT AND ABUSE

The First Amendment issues, as discussed earlier, are not properly reviewable under this Petition for Writ of Certiorari, because they were not reviewed by the Connecticut Appellate Court, nor presented to the Connecticut Supreme Court. However, even if the First Amendment issues were properly reviewable under this Petition, the record does not establish that there was any nexus between required religious practices and the adjudication of the young adults as neglected and abused. The free exercise clause does not apply in each and every situation in which a citizen subjectively claims that the regulation of a behavior impacts on alleged religious practice. Wisconsin v. Yoder, 406 U.S. 205, 215 (1972). The trial court must determine whether the regulated behavior and the religious faith of the citizen challenging the regulations are "inseparable and interdependent." Id.; Mason v. Gen. Brown Cent. School District, 851 F.2d 47, 51 (2d. Cir. 1988).

Simply put, religion was not one of the factors that led to the children being removed from the Petitioners' home and the trial court so found.[17] The Petitioners own expert on the

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[17] Nearly all of the references to the Jewish religion in the trial proceedings were raised on cross examination or redirect by the

Jewish Family, Dr. Norman Linzer, failed to establish any nexus between the behavior that resulted in the children's removal and required tenets and practices of the Jewish faith. Tr. 3/28/95 at 62-66. The trial court specifically found that the incidents of neglect and abuse on which the court relied for adjudication were not sanctioned by, or required tenets of the Jewish Faith.

> "Respondents [Parents] offered considerable evidence and testimony to further their argument, that most, if not all, of the conduct they engaged in and conditions which existed in their home, are sanctioned, if not required by the tenets of their religion.... Testimony offered by the respondents [Parents] did not seem to corroborate their beliefs. Dr. Norman Linzer, who testified as an expert on the Jewish Family, stated that many of the parenting practices which the court finds engaged in by the [respondent] parents, such as expulsion from the home to outdoors, refusal to speak or be spoken to, written performance contracts and written admissions of failure and disobedience, and the withholding of forgiveness for extended periods of time, are in fact, not acceptable parenting techniques according to Jewish law and Scripture." 9/28/95 Mem. of Dec. at 5-6.

Petitioners themselves. The Petitioners' counsel continually sought to raise the issue of religion, although not one scintilla of evidence was presented confirming that any of the discipline practices of which the children complained were in fact religious practices or required tenets of the Jewish Faith. (See notes 13, 14 and 15 in Petitioners Petition for Writ of Certiorari).

Finally, even if the Petitioners had established that the regulated behaviors were prescribed by their faith, which they cannot, there is a compelling state interest in the health, safety and welfare of children. Prince v. Massachusetts, 321 U.S. 158 (1944). When balancing the interests of the parents in discipline techniques that are tenuously related to their religious beliefs against the interest of the state as parens patriae faced with children at risk of serious psychological damage and/or exposure to the streets, if returned home, state intervention was warranted. 9/28/95 Mem. of Dec. at 11.

IV. THE PETITION FOR WRIT OF CERTIORARI DOES NOT MEET THE CRITERIA SET FORTH IN RULE 10

As stated in Rule 10, review on a writ of certiorari is not a matter of right, but of judicial discretion. The Petitioners state no compelling reason for the Court to grant the writ of certiorari. This is not a case in which there is a conflict between decisions of different United States courts of appeals on the same important matter; nor is there a conflict between the decision of a federal court of appeals and a state court of last resort; nor is it a case requiring this Court to exercise its supervisory powers over the federal courts of appeal. Rule 10(a). Further, the Petitioners do not allege that this is a case in which a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals. Rule 10(b). In fact the Connecticut Supreme Court decided nothing at all, except not to review the Connecticut Appellate Court decision that the appeal was moot. The Petitioners do not assert that this is a case in which a state court or a United States Court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has

decided an important federal question in a way that conflicts with relevant decisions of this Court. The issue of mootness as applied by a Connecticut Appellate Court to its own jurisdiction is not a matter of federal law.

CONCLUSION

The Petition for Writ Certiorari should be denied.

Respectfully submitted,

RESPONDENT
DEPARTMENT OF CHILDREN AND FAMILIES

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In The

Supreme Court Of The United States

October Term, 1997

IN RE: ELISABETH H.

IN RE: CATHERINE H.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

APPENDIX

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NOS. N-93141 AND N-93142

SUPERIOR COURT-
JUVENILE MATTERS

IN RE CATHERINE AND ELISABETH H.

JUDICIAL DISTRICT OF
DANBURY AT DANBURY

NOVEMBER 7, 1995

MEMORANDUM OF DECISION
DISPOSITION PHASE

On September 28, 1995, this court filed its Memorandum of Decision regarding the petition filed by the Commissioner of Children and Families which alleged that the above-named youths were neglected, abused and uncared for by their parents, Edward and Rochelle H.

In that Memorandum of Decision, the court adjudicated that the petitioner had established each of those allegations by a fair preponderance of the evidence at a lengthy and extensive trial.

Having bifurcated the proceedings into the adjudicatory and dispositional phases, the court then proceeded to conduct an evidentiary hearing to determine the appropriate disposition in view of the foregoing adjudication.

The dispositional phase hearing was conducted on October 18, 1995, after notice to all parties.

On the date of said hearing, the respondent parents, as parties pro se, filed with the court a pleading captioned "Dispositional Statement," which commenced with the words: "I would like to make a statement that we will not oppose the disposition for two reasons." After enunciating those

"reasons," the respondent parents conducted said statement as follows: "The only recourse left to us is our right to appeal this wrongful decision of abuse/neglect and turn our efforts to introduce [sic] some accountability to a system that badly needs it." It was subscribed and sworn to by the respondent mother and the respondent father. (Children's Ex. I.)

Neither of the respondent parents appeared for the dispositional hearing, nor did the attorney who remains their co-counsel and attorney of record, despite his absence from the courtroom on many of the final trial dates.

The court considered the respondent parents' "Dispositional Statement" to be their indication to the court that they had knowingly and voluntarily elected not to attend the dispositional hearing, and the court proceeded in their absence.

The attorney for Barbara and Moshe C., the Movants for Intervention, renewed their Motion to Intervene, dated November 17,1993. The court, noting that said motion had been marked off on a prior occasion with the movants' right to renew it at the time of disposition having been reserved to them by the court, granted the Motion to Intervene. No objection was made by the appearing parties.

Adjudication of the petitions have previously entered, the court has four common dispositional alternatives to consider. They are (1) commit the two youths to the Department of Children and Families; (2) order the youths returned to the home with the parents under the court's supervision (protective supervision); (3) vest custody of the youths in a third party; or, (4) dismissed the complaint if the parents have rectified the offensive situation.

The dispositional phase, unlike the adjudicatory phase, permits evidence to be offered or considered by the court regarding events right up to the final date of trial. The standard to be applied is the best interests of the child or youth.

The evidence in the instant case does not permit the court to make a finding that the parents have rectified the home situation which the court found to be the basis for the adjudication of neglect, abuse and uncared for as alleged in the petition.

The evidence does not permit the court to make a finding that the best interests of the youths would be served by returning them to the care and custody of the respondent parents under the protective supervision of the court.

There was no evidence that there is an appropriate third party who is ready, willing and able to be appointed as the guardian of Catherine and Elisabeth.

The court bases its findings upon, inter alia:

a. the DCF Social Study regarding Catherine and Elisabeth filed by DCF Social Worker, Linda Maxwell, on December 13, 1993 (State's Ex. 5);

b. the psychological evaluation - addendum of Bruce Freedman, Ph.D., filed on December 7, 1993 (State's Ex. 1);

c. the psychological evaluation of Bruce Freedman, Ph.D., filed on September 25, 1995 (State's Ex. 2);

d. memo of Lillie Davis, Guidance Counselor, The High School, Brookline, Mass., to Kelly McCarthy, [Mass.] D.S.S., dated October 16, 1995 (State's Ex. 3); and

e. letter of Kelly McCarthy, Social Worker, [Mass.] D.S.S., dated October 17, 1995 (State's Ex. 4).

The court finds that in view of all relevant factors including the age, intelligence, maturity, demeanor, preference and overall needs of both Catherine and Elisabeth, that it is in the best interests that they each be committed to the Commissioner of Children and Families for a period not to exceed twelve months, pursuant to Sec. 46b-129(d) of the Connecticut General Statutes.

Noting the progress each of these youths has reportedly made since their relative placement in the home of their sister, Barbara and her husband Moshe in Brookline, Massachusetts, it is recommended that their placement by the Commissioner continue to be in that home.

Noting the youths' preference to limit contact between themselves and their parents, the court makes no orders at this time concerning visitation between parents and children, but rather defers to the Commissioner to determine that issue.

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Joseph W. Doherty, Judge

Sec. 1-1d. "Minor", "infant", "infancy", "age of majority", defined.

Except as otherwise provided by statute, on and after October 1, 1972, the terms "minor", "infant" and "infancy" shall be deemed to refer to a person under the age of eighteen years and any person eighteen years of age or over shall be an adult for all purposes whatsoever and have the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities as persons heretofore had at twenty-one years of age, and "age of majority" shall be deemed to be eighteen years.

(1972, P.A. 127, S. 1.)

Sec. 17a-101g. Classification and evaluation of reports. Investigation. Home visit. Removal of child in imminent risk of harm.

(a) Upon receiving a report of child abuse as provided in section 17a-101b, the Commissioner of Children and Families, or his designee, shall cause the report to be classified and evaluated immediately. If the report contains sufficient information to warrant an investigation, the commissioner shall make his best efforts to commence an investigation of a report concerning an imminent risk of physical harm to a child or other emergency within two hours of receipt of the report and commence all other reports within seventy-two hours of receipt of the report. The department shall complete any such investigation within thirty calendar days of receipt of the report.

(b) The investigation shall include a home visit at which the child and any siblings are observed, if appropriate, a determination of the nature, extent and cause or causes of the reported abuse or neglect, a determination of the person or persons suspected to be responsible for such abuse or neglect, the name, age and condition of other children residing in the same household and an evaluation of the parents and the home. The report of such investigation shall be in writing. The investigation shall also include, but not be limited to, a review of criminal conviction information concerning the person or persons alleged to be responsible for such abuse or neglect and previous allegations of abuse or neglect relating to the child or other children residing in the household or relating to family violence.

(c) If the Commissioner of Children and Families, or his designee, has probable cause to believe that the child or any other child in the household is in imminent risk of physical harm from his surroundings and that immediate removal

from such surroundings is necessary to ensure the child's safety, the commissioner, or his designee, shall authorize any employee of the department or any law enforcement officer to remove the child and any other child similarly situated from such surroundings without the consent of the child's parent or guardian. The commissioner shall record in writing the reasons for such removal and include such record with the report of the investigation conducted under subsection (b) of this section.

(d) The removal of a child pursuant to subsection (c) of this section shall not exceed ninety-six hours. During this period of such removal, the commissioner, or his designee, shall provide the child with all necessary care, including medical care, which may include an examination by a physician or mental health professional with or without the consent of the child's parents, guardian or other person responsible for the child's care, provided reasonable attempts have been made to obtain consent of the child's parents or guardian or other person responsible for the care of such child. During the course of a medical examination, a physician may perform diagnostic tests and procedures necessary for the detection of child abuse or neglect. If the child is not returned home within such ninety-six hour period, with or without protective services, the department shall proceed in accordance with section 46b-129.

(P.A.96-246, S.9.)